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Mirko Canevaro*

The Authenticity of the Document at Demosth. or. 24.20–3, the Procedures of *nomothesia* and the so-called ἐπιχειροτονία τῶν νόμων

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Summary: This article is a response to Hansen’s recent defence of the authenticity of the document at Demosth. or. 24.20–3. It discusses the methodology for assessing the authenticity of the documents in the orators, in particular the role(s) of the stichometry and the importance of the epigraphic evidence. It provides an in-depth analysis of the evidence about the *nomothesia* procedure provided in Demosthenes’ „Against Timocrates“, showing, first, that this procedure was one centred on the enactment of new laws, and not, as the document describes, a general review of the laws of Athens; second, that the procedure described in the speech is one that can be initiated at all points of the year (consistently with what the epigraphic evidence shows), whereas the document describes an annual procedure taking place only on the 11th day of the first prytany; third, that the procedure described in the speech was initiated by a simple διαχειροτονία that allowed new proposals to be made, whereas the document describes multiple initial votes „kapitelweise“ to be held in the Assembly on different groups of existing laws. The last part of the article surveys eight specific problems with the text of the document, which confirm that it cannot be an authentic Athenian law.

Keywords: *nomothesia*, forgeries, Athenian law, Demosthenes’ Against Timocrates“

1. Introduction

In 2013, I proposed a new approach to the sources for *nomothesia* discussed in Demosth. or. 24 and 20 and a new interpretation of the relevant procedures.¹ My contention was that existing interpretations fail to make sense of all the evidence,

¹ Canevaro 2013a; 2013b, 80–104.

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and in particular of the extensive evidence found in Demosthenes' paraphrases of the relevant laws, supplemented by the epigraphic material. I argued that the reason for these difficulties is the uncritical reliance of historians on the information found in the documents found at Demosth. or. 24.20–3 and 33, which contradicts the rest of the evidence and that has led to untenable reconstructions of the procedures of *nomothesia*. In my treatment, I noted that these documents are non-stichometric, which indicates that they are later additions to the tradition of the speech, and have no original claim to authenticity – their tradition is not coterminous with that of the speech itself, and their authenticity cannot be predicated on that of the speech.² I explored the contradictions between documents and independent information, examined in detail the documents themselves finding several problems in their wording and expressions and in the logic of their provisions, and showed that they are later forgeries and are an unreliable source for reconstructing Athenian *nomothesia*. As a result, I proposed a new reconstruction of the fourth-century *nomothesia* procedures that did not involve an annual review of all the laws, and allowed instead for the enactment of new laws at all points of the year. The procedure, in my reconstruction, ran as follows: 1) in order to introduce a new law, a preliminary vote in the Assembly, at any point of the year, had to be held that would allow new laws to be proposed; this vote, like all votes in the Assembly, had to be preceded by a *probouleuma* of the Council; 2) once new proposals had been authorized by the Assembly, all new proposals had to be posted in front of the monument of the Eponymous Heroes, so that anybody could see them; 3) the bills had to be read out by the secretary in each Assembly until the appointment of the *nomothetai*; 4) in the third Assembly after the preliminary vote, on the basis of the bills presented, the people had to discuss the appointment of *nomothetai* and pass a decree of appointment; 5) opposing laws had to be repealed before the new laws could be enacted by the *nomothetai*; 6) presumably at the same meeting of the Assembly that appointed the *nomothetai*, expert *synegoroi* were elected to defend those laws whose repeal was necessary for enacting the new laws; 7) if the proposer of a new law failed to abide by any of these provisions, anyone could prosecute him on a charge of enacting an unsuitable law (*me epitedeion*), and if the case was heard within a year from the enactment of the law, the punishment could be anything the court decided, from a small fine to *atimia* or death.

In a characteristically kind yet belligerent article of 2016, M. H. Hansen attempts to defend his interpretation of the *nomothesia* procedures, based primarily on these documents, and challenges most of the grounds of my case against the

2 Canevaro 2013b, 19–23.

document at Demosth. or. 24.20–3.³ First, he takes issue with one of the tenets of my methodology – the need for the document to conform to the language and formulas of Athenian inscriptions. Second, he offers a reading of the paraphrases at Demosth. or. 24.17–19 and 24–6 of the law on *nomothesia* that attempts to show that the procedure they describe is not incompatible with that described in the document. Third, he argues that the problematic features I identified in the document itself are not in fact problematic, and when they are, the problems do not prove that the document is not authentic.

Hansen's case is unconvincing on all counts, but working out why exactly his arguments are not convincing has forced me to deepen my readings of the sources and my understanding of the procedure, as well as to clarify some elements of the methodology I used in my original analysis. I thank him therefore for his attention to my work and for the opportunity to return to this issue and offer this counter-discussion, in a collaborative spirit, as one further step towards a better historical understanding of Athenian lawmaking. My response follows the structure of Hansen's article: first, I present some methodological considerations (section 2); second, I discuss the paraphrase and the kind of procedure it describes (section 3); third, I turn to the problems with the document itself. Because of the structure of this article, composed as a response to Hansen's, this discussion does not replace my original treatment (Canevaro 2013a), where my reconstruction of the procedure is comprehensively laid out. It should rather be read in conjunction with my previous article (and, of course, with Hansen's response), as an analysis that strengthens several parts of my original case.

2. Documents, paraphrases and inscriptions: methodological considerations

In my work I have applied a consistent methodology to assess whether a document is likely to be authentic or not.⁴ The aim of the methodology is not to prove that a document is a forgery, nor is it to prove that a document is authentic. It is a

³ Hansen 2016.

⁴ Canevaro 2013b, 10–36; Canevaro – Harris 2012, 98–100. For endorsements of my method and my analysis see Cobetto Ghiggia 2013; De Martinis 2013; Mirhady 2014; Novotny 2014; Vlassopoulos 2014; Bearzot 2015; Liddel 2015; Pinto 2015; Gagarin 2016; Scafuro 2016 (with some objections on points of detail); Sickinger 2016. See also Carawan 2016, which relies on my assessment of the documents of Demosth. or. 23 and 24, Mikalson 2016, 267 n. 1 and Faraguna 2016, which endorse my method and apply it to other documents.

method to assess the likelihood that a document may be authentic or not authentic whose aim is not to prejudge the analysis with any kind of inherent bias. The application of the method has led me in many cases to indicate that a document is highly likely to be authentic, in many others that it is highly likely not to be, and in some cases that the analysis *per se* cannot decide the issue (I shall return to these cases). With ‚authentic‘ I mean that a document is a faithful transcription of the actual Athenian original (and this is the sense in which Hansen also uses the word), and can therefore be used as reliable, direct evidence for Athenian laws and procedures.⁵ With ‚not authentic‘ I mean that a document is not the transcription of an actual Athenian law or decree (whether complete or partial), but rather a later fabrication. Such fabrications are ‚forgeries‘ *sensu lato*, because there is no clear evidence of an intent to deceive: they are late and (more or less) clumsy attempts to reconstruct the actual law or decree, based on the (often misunderstood) evidence of the orators and occasionally on further independent sources lost to us. These ‚reconstructions‘ are not actual Athenian laws and decrees, and those that produced them in most instances resorted to invention and to an indiscriminate use of the evidence available to them, so that the documents are not reliable evidence for the Athenian laws and decrees they purport to reconstruct.⁶

⁵ See the very title of Hansen 2016, and *passim*.

⁶ See Canevaro 2013b, 35–36 and 329–342. Hansen argues that the document discussed in this article, as well as the decrees of Teisamenus and Patrocleides in And. 1, are actually authentic Athenian laws and decrees. Sommerstein’s approach varies: while he is convinced (Sommerstein 2014) that the decree of Demophantus at And. 1.95–98 is a transcription of the actual decree (but see now Harris 2015 which supplements Canevaro – Harris 2012 in showing that it is not), he agrees with me (Canevaro 2013b, 173–180) that the Heliastic Oath at Demosth. or. 24.149–151 is not the actual oath as it was pronounced at any point, but rather a late reconstruction (Sommerstein – Bayliss 2012, 70–80), arguing however for the reliability of specific provisions that the compiler would have found in some source lost to us. Carawan (forthcoming), although he presents his approach as a middle ground between my position and Hansen’s, is in fact adamant that the documents in And. 1 are not transcriptions of actual Athenian decrees, but rather pastiches of information found in various places put together for the purpose of reconstructing the decrees. Carawan proceeds to speculate on the way the documents were composed, a worthy enterprise, but the bottom line is that these documents are not ‚authentic‘, and therefore cannot be taken at face value as evidence for Athenian laws and decrees, but are later ‚reconstructions‘, ‚pastiche‘ marred by problems and misunderstandings. Shear’s (2017, 174–175 n. 52) approach is somewhat muddled: she seems to agree that the documents (specifically in Andocides) are not transcriptions of actual laws or decrees, but contends that „ancient quotation practices were [not] identical to the modern practice of exact quotation.“ She seems to be claiming therefore that the laws read out by the *grammateus* in the Athenian lawcourts were not in fact accurate quotations of the actual laws of Athens – hence, somehow, the documents are authentic despite being inaccurate in language and contents. She proposes to prove this by pointing to Pollux’s quotation practices,

My method relies mainly on an examination of the language and the contents of each document (and of the external evidence about the relevant laws and decrees) according to three methodological principles: 1) the documents must be compared with the orators' paraphrases and comments, which are normally reliable in representing the contents of the relevant law or decree (if not in interpreting them), in particular when these comments are found in the vicinity of the reading of the law or decree; they must also be compared with external evidence.⁷ 2) Problems in the texts of the documents cannot *a priori* be removed by means of transpositions, emendations, and deletions – scribal errors are of course possible, but should be postulated only if the document can be proven to be authentic on other grounds. Such problems are *prima facie* grounds against authenticity.⁸ 3) „Documents should conform to the language, style and conventions of Classical Athenian inscriptions of the same type [...] The presence in a document of words or expressions never found in similar Attic inscriptions, or in any Attic inscription at all, casts serious doubts on the document's authenticity.“⁹

as though a second century CE grammarian could tell us anything about how the laws were quoted by the *grammateus* in Athenian lawcourts ca. five centuries earlier. She also points to the differences between the version of the honours for Lycurgus found in IG II² 457 and that quoted in [Plut.] Mor. 851F–852. The text at [Plut.] Mor. 851F–852 appears to come from Lycophoron's request to inherit the *sitesis* granted in Lycurgus' honours, as a copy of the decree produced by Lycophoron and added to the dossier (see Faraguna 2003, 487–491). But, first, the two texts are similar enough that the inscription has in fact been restored on the basis of [Plut.] Mor. 851F–852; second, both versions are written in impeccable Attic official language (on which see below, pp. 78–81); third, although the text of [Plut.] Mor. 851F–852 has one additional clause and lacks several, there are no inconsistencies between the two documents, and where they overlap the overlap is mostly *verbatim*. [Plut.] Mor. 851F–852 is evidence of selective quotation from an original, which is common also in the orators (Canevaro 2013b, 27–32), but of exact quotation nevertheless, unlike the documents I challenge. Ultimately, quotation practices were context dependent and were defined by institutional rules and practices. I have explored the relevant institutional rules and practices of the Athenian lawcourts in Canevaro 2013b, 27–32 (particularly n. 63) and shown that all the evidence points to conscientious and relatively 'exact' quotation practices, particularly for documents read by the *grammateus* but also (with less precision as to wording) in the orators' own quotes.

7 Canevaro 2013b, 27–34.

8 Hansen 2016, 441–442 agrees that this principle is sound, but his exposition of it is not quite accurate: „Major problems with the text of a document cannot be explained as scribal errors. They must be mistakes made by someone who composed the document after the Classical period and did not understand Athenian law and legal procedure.“ The point is not that they cannot be scribal errors and must be mistakes made by forgers; it is rather that, from a methodological point of view, they cannot be assumed to be scribal errors, and explained away as such. They must be part of the general case for or against authenticity, although they may not be decisive evidence in either direction.

9 Canevaro 2013b, 34–35.

In addition to these methodological principles, my analysis takes into account the evidence of the stichometry.¹⁰ The stichometry plays a role in my analysis on two levels, a basic level and a second-order level. At a basic level, the stichometry allows us to tell whether a document was part of the speech from the beginning, already in the „Urexemplar“, or was added at a later stage of the tradition of the speech. It does not tell us, I must emphasise, whether a document is authentic or not. But it does divide the extant documents sharply into two categories: documents that were there from the beginning, and documents that were added much later (incidentally, these documents tend to appear only in part of the manuscript tradition)¹¹. It is not impossible that a document added at a later date may have been found somewhere and still be reliable, but the possibility that it may be non-authentic is certainly there, and this is compounded by the fact that even the most fervent believer in the authenticity of the documents must admit that a significant number of non-stichometric documents are in fact forgeries: nobody doubts that all the documents in Demosth. or. 18 are forgeries.¹² Thus, stichometry does not allow us to decide that non-stichometric documents are forgeries – only the analysis of their language and contents can! But it does eliminate any presumption of authenticity – there is no *a priori* reason whatsoever to assume that non-stichometric documents should be authentic (and there are reasons to be sceptical). And this is why it comes at the beginning of my study: it proves that the usual approach of historians who assume that these documents must be authentic unless proven otherwise is misguided, and that there is no intrinsic reason for which these documents should be trusted.¹³ This is a point that is not adequately taken into consideration in Hansen’s analysis, and ignoring it determines the structure of his analysis and, ultimately, his results. But before discussing this problem of Hansen’s analysis, I need to turn to the secondary function of stichometry in my work, one that is entirely separate from this basic use and does not in any way affect the analysis of the document at Demosth. or. 24.20–3.

10 Canevaro 2013b, 10–26.

11 Canevaro 2013b, 7–10.

12 See for an analysis of all these documents Canevaro 2013b, 237–342.

13 This is why, incidentally, the criticism of Maffi 2012, and the cautioning of Bearzot 2015 and Scafuro 2016 about my use of the stichometry are off the mark. It is not a fully accurate description of my method to state: „La presenza o meno nell’*Urexemplar* costituisce il criterio principale per la discussione dell’autenticità.“ My analysis of the individual documents is entirely independent from their presence in the „Urexemplar“; it is only in the few cases in which the analysis is inconclusive that I use the stichometry as a rough indication of whether it is more likely that a document is authentic or not, see below.

In the particular case of Demosth. or. 24, the stichometry plays also a second-order role in my analysis. My book analysed 49 documents. 15 of these were definitely part of the „Urexemplar“, whereas 29 were definitely not part of it. For 5 documents in Demosth or. 24 it is impossible to tell (Demosth or. 24.50, 54, 56, 59, 63). Of the 15 stichometric documents, my analysis concludes that 10 of them, based on the analysis of their language, contents and external evidence, have a high likelihood of being authentic, whereas the analysis is inconclusive in one direction or the other in 5 cases. Of the 29 non-stichometric documents, my analysis shows that 27 are very likely to be forgeries, whereas in two cases it is difficult to tell. The overall analysis, therefore, shows that the majority of stichometric documents is arguably authentic, and that the vast majority of non-stichometric documents is arguably not. From this very simple fact, I infer the rather common-sense observation that stichometric documents are absolutely more likely to be authentic, and non-stichometric ones are absolutely more likely to be forgeries. This inference does not represent an infallible law, but allows us to formulate an educated guess on the authenticity where the regular analysis fails to provide a clear result – of the 7 cases in which the analysis is inconclusive, the 5 stichometric documents have a higher chance of being authentic, and the 2 non-stichometric ones have a higher chance of being inauthentic. Likewise, in the 5 instances in which we cannot tell whether a document is stichometric or not, where the analysis points towards authenticity, the chances that this is a stichometric document are higher, whereas where it points towards inauthenticity, the chances that it is non-stichometric are higher. But I must emphasise that this second-order use of stichometry does not replace or determine the analysis of the documents, because it comes into play only after the analysis, and when the analysis proves inconclusive. And this is not the case, as far as I am concerned, for the document at Demosth. or. 24.20–3: the verdict of inauthenticity does not depend on the stichometry, but on the analysis of the document vis-à-vis the paraphrase and the external evidence.¹⁴

Hansen agrees broadly with my first two methodological points for the analysis of the documents: that the text should not be „emended into authenticity“, and that the paraphrases are normally reliable in the information they provide (although they sometimes interpret it deceptively), but fails to draw the consequences of these points once they are combined with what the stichometry shows at the „basic level“ – that there is no presumption of authenticity for the non-stichometric documents. If all this is broadly correct (and Hansen seems to agree

¹⁴ Hansen 2016, 474 concludes his analysis by promising a further study which will discuss also the issue of stichometry and authenticity. I hope these two paragraphs will go some way towards clarifying my use of the stichometry, and prevent misunderstandings such as those in Maffi 2012.

that it is) then there are key consequences from a methodological and logical point of view. Because there is an *a priori* presumption that the paraphrases are normally reliable but no presumption whatsoever that the non-stichometric documents are authentic, then the only sensible way to assess the reliability of a document must be to start from the paraphrases (tested against further external evidence), and not from the document itself. One should reconstruct the relevant laws, decrees and procedures on the basis of the paraphrases (tested against further external evidence) and independently of the document, and then test the document against the result of that investigation. This approach, of course, privileges the paraphrases (checked against independent evidence), stresses the importance of inconsistencies between paraphrases and documents, and underplays the importance of broad similarities – after all, forgers had access to the paraphrases when they composed their documents.¹⁵

Although he agrees with my assessment of the paraphrases, Hansen laments that „in Canevaro’s book too, whenever the orator’s paraphrase is inconsistent with the document, the *a priori* view is: trust the paraphrase and reject the document as a forgery“.¹⁶ With some nuances, this is correct, and it could not be otherwise: the paraphrases are contemporary to the relevant laws, have a straightforward and clear textual tradition, are in the vicinity of readings of the actual laws and decrees, need to be broadly accurate (otherwise they would alienate the judges), and there is evidence that they normally are (as I have argued, and as Hansen agrees).¹⁷ The non-stichometric documents, on the other hand, are much later insertions in the speeches, have a mysterious tradition and origins that are very hard for us to reconstruct, and are often clearly forgeries (see those in Demosth. or. 18).¹⁸ It is the documents that we are testing, and it is inevitable that the generally reliable evidence found in the orators should have logical and methodological priority in our analysis. The alternative – the method used by Hansen in his analysis – is to start with the document, to reconstruct the law or decree (in this case the procedure of *nomothesia*) on the basis of the document, and then to use that reconstruction as a check for his reading of the paraphrase – once he has derived his reconstruction from the document, Hansen looks for broad similarities between this and the paraphrase, without realizing

15 One should also note that the assumption that forgers would naturally stick to the paraphrases is demonstrably false – it is sufficient to look at the forged documents of Demosth. or. 18, which are often largely independent of the paraphrases, see Canevaro 2013b, 237–318.

16 Hansen 2016, 442.

17 See Canevaro 2013b, 27–33 and Hansen 2016, 442.

18 Canevaro 2013b, 7–26, 237–318.

that these prove nothing.¹⁹ He then goes through the paraphrase with the explicit purpose of showing that it is possible to read it in such a way that may be reconciled with the reconstruction he has derived from the document. I disagree with his analysis and will show in the remainder of the article that, in order to do this, Hansen stretches the meaning of the text beyond recognition, and many of his readings of the relevant texts are impossible. But quite apart from this, this method makes Hansen's analysis structurally biased. It is not a critical assessment of the document, but rather a defence that ultimately does nothing more than attempting to argue (unconvincingly) that the document may be authentic, but provides no positive arguments in support of the thesis that it is authentic.

2.1 The documents and the language of inscriptions

The one methodological point that Hansen finds fully inadequate is the third: that „documents should conform to the language, style and conventions of Classical Athenian inscriptions of the same type“. ²⁰ Hansen believes that „to insist on having parallels in contemporary Attic inscriptions or in any Attic inscription is a dangerous method to use in this case, because the epigraphic evidence at our disposal is both restricted and biased“. He points out that we have virtually no „constitutional“ laws preserved in inscriptions that would provide relevant parallels for our document, and then provides a list of technical legal terms attested in the orators but unattested in inscriptions. I am afraid, however, that his discussion here is a strawman argument, which misrepresents my method as much cruder than it actually is.

First of all, although there is no doubt that the epigraphic sample is still „restricted“ in comparison with the actual epigraphic output of the city, in absolute terms the evidence is extensive – Lambert counts just over 800 decrees and laws for the period from 403/2 to 322/1 BCE, and ca. 270 from before 403/2. ²¹ This is a very significant sample, which gives us considerable confidence on a variety of formulas, grammatical constructions and terminology, to the extent that we make confident restorations in lacunose inscriptions. They may not cover all of Attic documentary language but, first, they leave no doubt that there was such a language, and that it was both significantly different from and overlapping with ordinary language; ²² second, they show that documentary language used, in a

¹⁹ This is particularly evident in Hansen 2016, 446–449.

²⁰ Hansen 2016, 442–445.

²¹ Lambert 2005, 130 n. 31; (forthcoming), n. 6.

²² Even in strictly grammatical terms, there are examples of forms and structures that are common in literary sources but consistently avoided in inscriptions, which always use other forms.

variety of cases, very consistent formulas to convey particular bits of information; third, they show that consistent language, structures and formulas were used across very different kinds of decrees and laws (in topic and scope). Thus, honorary decrees, laws and international treaties of the same period use for instance the same dating formulas, the same calendar (for the period we are concerned with, the bouleutic calendar)²³, and the same grammatical structures and terms to convey the same meanings.

It is not the case, as Hansen seems to suggest, that „laws on legislation“ would have been written in a documentary language different from that of public honours, international treaties or laws on silver coins or transportation and storage. They would of course contain pieces of information, regulations and prohibitions that are not paralleled in different kinds of decrees and laws, but we should expect that when the meaning is the same, that should be conveyed in the same way as in other inscriptions. Thus, for instance, the use of συναπολογοσησομένου in the document to indicate elected public advocates is suspect not simply because this term is unattested in inscriptions, but because the meaning is attested, and conveyed consistently with other terms (primarily *syndikoi*).²⁴ Likewise, ἐπιχειροτονίαν ποιεῖν is not problematic simply because it is a grammatical structure unattested in inscriptions; it is problematic because this is not the structure inscriptions use when they talk about putting a matter to the vote, and more generally ποιεῖν is not the verb normally used with χειροτονία and derivatives.²⁵ Comparison with inscriptions is not a simple matter of searching a particular form in the epigraphic corpus, but is rather to do with finding out whether we do know from the corpus how a particular meaning or bit of information was consistently conveyed, and checking whether the document conforms to this. This is the way in which I apply the principle in my work, and it presupposes only the basic recognition that Attic public documents conformed to a distinctive documentary language and used formulas and structures roughly consistently. These seem to me uncontroversial propositions. And I also note (and

One example which I note in my book (Canevaro 2013b, 35 n. 79) is the imperative in -τωσαν, which for a significant period is common in literary texts but never used in epigraphic ones (Threatte 1980–96, II., 462–466). Another example is αὔριον alone to mean ‚tomorrow‘ (see below), which is perfectly good Greek and widespread in literary language, but which is never used in inscriptions, which always prefer to it, to convey the same meaning, εἰς (or ἐς) αὔριον (174 instances). That Threatte 1980–96 has been able to reconstruct so successfully a grammar of Attic inscriptions that is recognizable yet significantly different in a variety of its features from ordinary Attic grammar is in itself evidence that there was a documentary language.

²³ See below pp. 116–118.

²⁴ See below pp. 118–122.

²⁵ See below pp. 107–108.

take into account in my analyses) that „[s]light variations might not amount to decisive evidence of forgery“.²⁶

Hansen provides a long list of technical terms that are unattested in inscriptions but found in the orators, but does not provide a single example of my work disqualifying a document as a forgery because of the mention of a meaning, figure or institution that is unattested in inscriptions but attested, with the same terms, elsewhere. When, on the other hand, the relevant meaning, figure or institution is attested in inscriptions, but the terminology, grammar and formulas is entirely inconsistent, this casts doubts on the authenticity of the document. One or two such instances are never enough in my analysis to deem a document non-authentic, but several convey a strong impression of inauthenticity, and combined with a variety of other problematic features contribute to a general verdict of inauthenticity.

The specific examples of the alleged shortcomings of my method that Hansen provides are in fact misguided and show that his is indeed a strawman argument.²⁷ The first example comes from the law about *adeia* to discuss *atimoi* and *opheilontes* preserved at Demosth. or. 24.45, which I consider authentic.²⁸ Hansen notes that the document contains the expression $\mu\eta\ \xi\lambda\alpha\tau\tau\omicron\nu\ \xi\zeta\alpha\kappa\iota\sigma\chi\iota\lambda\iota\omega\nu,\ \omicron\iota\varsigma\ \alpha\tilde{\nu}\ \delta\acute{o}\xi\eta\ \kappa\rho\acute{\upsilon}\beta\delta\eta\nu\ \psi\eta\phi\iota\zeta\omicron\mu\acute{\epsilon}\nu\omicron\iota\varsigma$, and that although inscriptions do attest $\kappa\rho\acute{\upsilon}\beta\delta\eta\nu\ \psi\eta\phi\iota\zeta\epsilon\sigma\theta\alpha\iota$ (IG II² 1141l. 6; 1183l. 18; 1237l. 82), we never find $\xi\zeta\alpha\kappa\iota\sigma\chi\iota\lambda\iota\omicron\iota$ and none of the relevant inscriptions indicate a number. Because of this, he claims, if I had applied my method consistently, I should have judged the document inauthentic, but I do not. This is a caricature of my method (and I never make such an argument in the case of inauthentic documents). The expression in the document describes a vote by secret ballot with the words $\kappa\rho\acute{\upsilon}\beta\delta\eta\nu\ \psi\eta\phi\iota\zeta\omicron\mu\acute{\epsilon}\nu\omicron\iota\varsigma$, which finds perfect parallels in inscriptions. The law also prescribes that there should be a quorum of six thousand, which we know existed in Athens, and was used only in a small number of specific procedures.²⁹ $\xi\zeta\alpha\kappa\iota\sigma\chi\iota\lambda\iota\omicron\iota$, attested or not, is the only way to say six thousand in Greek, so it would be ridiculous to consider it a mark of forgery because it is unattested in inscriptions – if we had an inscription with the number six thousand spelled out, it would have $\xi\zeta\alpha\kappa\iota\sigma\chi\iota\lambda\iota\omicron\iota$. Hansen also observes that none of the epigraphic examples with $\kappa\rho\acute{\upsilon}\beta\delta\eta\nu\ \psi\eta\phi\iota\zeta\omicron\mu\acute{\epsilon}\nu\omicron\iota\varsigma$ has a number. But these inscriptions prescribe a vote by secret ballot, and there is no reason to assume that they also prescribe a quorum without indicating it (and certainly not a quorum of six thousand, as they are decrees of a tribe, of a deme

²⁶ Canevaro 2013b, 34–35.

²⁷ Hansen 2016, 444–446.

²⁸ Canevaro 2013b, 127–132.

²⁹ See Canevaro 2013b, 131–132.

and of a phratry). If they had prescribed a quorum, it is likely that they would have indicated the quorum with the relevant number. I do not consider this expression as evidence of inauthenticity because it is not – where we have a parallel for the relevant meaning in inscriptions (the secret ballot), the meaning is conveyed by exactly the same formula, and the numeral is unparalleled because in none of these cases the votes had a quorum of six thousand.

Hansen's second example is similarly misleading. It is the document with the so-called decree of Epicrates of Demosth. or. 24.28.³⁰ I judge this document a forgery (and Hansen concurs), and one of the several problems that I find is that the document expresses the meaning „tomorrow“ with αὔριον alone, which is perfectly acceptable in ordinary Greek, but is never found in inscriptions, where we always find (174 examples) αὔριον preceded by εἰς (or ἐς) to mean, adverbially, „tomorrow“. This is one instance in which the term used is perfectly good Greek for the meaning to be conveyed, but we have overwhelming evidence that in documentary language this meaning was always conveyed differently, and this casts some doubts on the authenticity of the document. Hansen's objection is that in the paraphrase we also find αὔριον by itself, and he wonders: „Must we then emend αὔριον in Demosthenes' comment?“ It is unclear to me how this is relevant. The issue is the language of the documents themselves, which must be consistent with that of inscriptions, whereas here Hansen is talking about the paraphrase, that, I argue, normally reports the contents of the relevant law or decree accurately but, obviously, paraphrases them! Nowhere in my work do I state that the paraphrases must fully conform to the language of inscriptions, or that they do not often change documentary language into ordinary language – they generally represent faithfully the contents of laws or decrees, but not always their phrasing, and I stress that the language of the literary sources does not in fact conform to documentary language. If the document had εἰς αὔριον while the paraphrase has αὔριον by itself, that would be in fact an argument for authenticity – an instance in which the document would preserve documentary language where the paraphrase translates it into ordinary Attic Greek. But it does not, it shows a form that is inconsistent with overwhelming epigraphic evidence, and this is evidence of inauthenticity (not necessarily conclusive evidence, but it contributes to the overall case). The form found in the paraphrase is entirely irrelevant.

30 Canevaro 2013b, 104–113.

3. Reconstructing nomothesia: reading the evidence

It is now time to turn to the procedures of *nomothesia* and to the document at Demosth. or. 24.20–3. In my original treatment, I identified four key and decisive differences between the procedure described in the document at Demosth. or. 24.20–3 and the information about *nomothesia* found in the paraphrase of the same speech and in other sources (oratorical and epigraphic).³¹ I quote from my summary:

„(1) The procedure described by Demosthenes is one for enacting new laws, whereas the document provides for an annual vote of approval of the entire ‚code‘ of laws and for the rejection of some. (2) Demosthenes describes a preliminary vote to allow new proposals (plural) to be made, whereas the document describes a vote of approval for the existing laws section by section. (3) The document sets this vote of approval in the 11th day of the first prytany of every year and provides, in case some laws are not approved, for the appointment of the *nomothetai* following a discussion ‚in the last of the three Assemblies‘. Demosthenes, on the other hand, supported by the epigraphic evidence, shows that the *nomothetai* could be appointed at any point of the year. (4) The document provides for the election of five *synegoroi* in the same Assembly on the 11th of the first prytany. Demosthenes, on the other hand, implies that they were appointed later after the proposals for new laws had been presented. A closer analysis of the features of the document confirms that it cannot be an authentic Athenian statute.“

The most substantial section of Hansen’s article is dedicated to arguing that these inconsistencies do not exist, and that the text of the „Against Timocrates“ can be read in a way that confirms the account of the document.³² Hansen looks in Demosthenes’ paraphrase for evidence that Demosthenes is describing a procedure

³¹ Canevaro 2013a, 152; 2013b, 96.

³² Hansen 2016, 445–462. On the problem with this approach, which starts from the document and looks for confirmation of its statements, see above section 2.2. Hansen dedicates pp. 449–51 to listing the main (very general) features that seem to be consistent in the document and in the paraphrase. This, however, contributes little to the discussion. If the document was fabricated to be a reconstruction (however clumsy and unreliable) of the procedure described in Demosthenes’ account, then it is obvious that there must be some general similarities between the two (we find some general similarities between documents and paraphrases even in Demosth. or. 18!). What matters, aside from some general points of similarities, is whether we can find inconsistencies in the details of the procedure.

of general review and approval of the laws of the city by section (against inconsistencies 1 and 2)³³ and that this procedure was a set item in the agenda of the first Assembly meeting of the year, on the 11th of Hekatombaion (against inconsistency 3).³⁴ He does not deal here with inconsistency 4, because the existence of this inconsistency depends on the existence of inconsistencies 1, 2 and 3.³⁵ I shall deal here with Hansen's arguments about the inconsistencies between the procedures in the document and in the paraphrase in three separate sections: first I shall examine his claims and arguments for the existence of an ἐπιχειροτονία τῶν νόμων as a review of the existing laws that could (but did not need to) result in the enactment of new laws (section 3.1); second, I shall examine his claims and arguments that such a review was held annually and was a set item in the agenda of the first Assembly meeting of the year (section 3.2); third, I shall examine his reading of this ἐπιχειροτονία τῶν νόμων as a two-stage procedure allegedly consistent with that described in the document (section 3.3).

3.1 A procedure for reviewing, rejecting or confirming all the existing laws?

Hansen's starting point for his reconstruction of *nomothesia* and for the analysis of Demosthenes' paraphrase is a demonstration that both the document and the paraphrase describe in fact a procedure of review of all the laws of the city (by section).³⁶ That such a review, a distinctive procedure identified explicitly as an ἐπιχειροτονία τῶν νόμων, existed is the foundation of Hansen's argument, and also stands behind his later discussion of two different models of ἐπιχειροτονία, one of which is followed in the ἐπιχειροτονία τῶν νόμων.³⁷ He states immediately, as uncontroversial, that „[t]he procedure of *epicheirotomia* is described both in the document and by Demosthenes in his paraphrase“. Is this correct?

The document undeniably describes an ἐπιχειροτονία τῶν νόμων, a distinctive procedure with this name composed of several votes on different sections of the „code“ of the laws of Athens. These individual votes, all collectively described as an ἐπιχειροτονία τῶν νόμων, are in fact described as votes in two steps between two alternatives, i. e. as διαχειροτονία.³⁸ Thus, the document uses the word

³³ Hansen 2016, 451–458.

³⁴ Hansen 2016, 458–462.

³⁵ Cf. Hansen 2016, 471–472.

³⁶ Hansen 2016, 451–453.

³⁷ Hansen 2016, 458–462.

³⁸ See below pp. 85–89, 100–105.

ἐπιχειροτονία as the name of the overall procedure, of which the individual votes in two steps between two alternatives are parts. Hansen's claim that „[b]oth the document and Demosthenes specify the *epicheirotomia* as a *diacheirotomia*, i. e. a choice between two options“ is strictly speaking incorrect. The document describes a series of διαχειροτονίαι which are part of an overall ἐπιχειροτονία τῶν νόμων. The paraphrase (as I have argued and as we shall see) describes one single διαχειροτονία, not multiple διαχειροτονίαι, and later refers to that one διαχειροτονία using the verb ἐπιχειροτονεῖν.

The procedure described in the document has one salient feature: the focus in most of the document is on rejecting and repealing existing laws. The διαχειροτονίαι concern whether particular sections of the existing code of laws are deemed to be satisfactory (δοκοῦσιν ἀρκεῖν) and the procedure can result in particular laws being rejected (ἐὰν δέ τινες τῶν νόμων τῶν κεimένων ἀποχειροτονηθῶσι), with a later Assembly held in that case about those laws that have been rejected (περὶ τῶν ἀποχειροτονηθέντων), which should discuss the appointment of the *nomothetai*. For most of the document there is no mention whatsoever of new law proposals. When new law proposals are finally mentioned, the document does not indicate that these proposals are compulsory – that there need to be new proposals. Before the Assembly about the laws that have been rejected (πρὸ δὲ τῆς ἐκκλησίας), whoever wishes to make a proposal must post it before the monument of the Eponymous Heroes (ὁ βουλόμενος Ἀθηναίων ἐκτιθέτω πρόσθε τῶν ἐπωνύμων). The wording indicates that new proposals are a possibility, fully dependent on volunteers, but not a necessary part of the procedure (cf. τοὺς νόμους οὓς ἂν τιθῇ), and there is no requirement that those who proposed the rejection of one of the existing laws must enact a new law. The document describes a procedure that could end with the repealing of one of the existing laws without any new law being enacted. Hansen sees this and notes in his analysis of the document that before the *nomothetai* the elected advocates „are to defend the laws in force which have been provisionally rejected by the Assembly and submitted to the *nomothetai* for a final decision about approval or repeal“. He also notes that „[a]fter the first *ekklesia*, any Athenian can propose an alternative to laws rejected in the *epicheirotomia*“, and that „[t]he presumption is that the citizen(s) who raised the matter in the *ekklesia* and succeeded in persuading the *demos* to reject a law will propose – or perhaps even be obliged to propose – an alternative, but in the law that is not stated as a requirement“.³⁹ This is correct – the procedure described in the document is a procedure for repealing existing laws, which may but need not involve the proposal of new ones, and can result in the repealing of one or more of the existing laws without the approval of

³⁹ Hansen 2016, 448.

new ones. Conversely, the paraphrase (as I have argued, and as we shall see) describes a procedure for the enactment of new laws – the initial vote (διαχειροτονία) is in fact on whether new laws need to be proposed (εἰσοιστέος at Demosth. or. 24.25) – which can but need not involve the repealing of existing laws.

One striking feature of the paraphrase is that Demosthenes does not actually use the word ἐπιχειροτονία at all. When he describes what the laws prescribe (Demosth. or. 24.25), he states that they καὶ πρῶτον μὲν ἐφ’ ὑμῖν ἐποίησαν διαχειροτονίαν. He then describes what this διαχειροτονία is about: πότερον εἰσοιστέος ἐστὶ νόμος καινὸς ἢ δοκοῦσιν ἄρκεῖν οἱ κείμενοι. Demosthenes then states that after this procedural step (viz. the διαχειροτονία), if you (the Athenians) vote to make proposals (ἂν χειροτονήτ’ εἰσφέρειν), not even then new laws can be immediately enacted (but one has to publicise them first and wait a set period of time). What Demosthenes describes here, strictly speaking, is one double vote (διαχειροτονία) about whether proposals can be made (or, on the other hand, as stressed by Hansen, whether the existing laws are satisfactory). According to the text, the next procedural step (μετὰ ταῦτα) is making proposals and enacting new laws (which is specified as taking place after the Assembly at which the διαχειροτονία is held). There is no mention of multiple διαχειροτονίαι on various sections of the law code, which collectively take the name of ἐπιχειροτονία τῶν νόμων. There is only, following the text, one single διαχειροτονία, which the text describes as such. One would be hard pressed to read between the lines of this description a reference to multiple votes by section on all the laws of the city (as the document describes), followed by individual votes on individual statutes (as Hansen, somewhat arbitrarily, postulates; see below pp. 93–94, 105). And no one would ever dream to formulate such a hypothesis if it were not for the need to reconcile this paraphrase with the document.

The expression ἐπιχειροτονία τῶν νόμων (or the word ἐπιχειροτονία alone) is also not found in the next section (Demosth. or. 24.26), to designate the overarching procedure that took place in the Assembly. All we find is a mention of the Assembly at which Timocrates, immediately and in violation of the times set by the law, passed the decree summoning the *nomothetai* for the next day, as the Assembly ἐν ἧ τοὺς νόμους ἐπεχειροτονήσατε. In Hansen’s reading this very quick reference does a lot of work („The crucial passage is Demosthenes’ description of the *epicheirotomia* [26]“) ⁴⁰. It refers to the overall procedure of the ἐπιχειροτονία τῶν νόμων, including multiple διαχειροτονίαι on various sections of the code of law and later votes on individual statutes in these sections. It indicates, *pace* Demosthenes’ account in the previous paragraph and in accordance with the document, that the procedure was

40 Hansen 2016, 453–454.

viewed as a review of all the laws of the city, which may possibly result in new laws being enacted, and not primarily as a preliminary vote that allowed the procedure to enact new laws to be set in motion.

A close reading of the context makes one doubt that so much can be built on this brief expression, and suggests that it should be interpreted more simply as a neutral reference to the διαχειροτονία described at the previous paragraph. At Demosth. or. 24.26, Demosthenes zooms in on Timocrates' behaviour, concentrating on the lack of publicity for his proposal and the failure to respect the times prescribed by the law. In this context, Demosthenes does not introduce new elements, but rather applies the description of the correct procedures summarised and paraphrased at the previous paragraph to the specific example of Timocrates' behaviour. He prefaces his description of Timocrates' behaviour with an explicit reference to the rules discussed at the previous paragraph: τούτων μέντοι τοσούτων ὄντων οὐδὲν πεποίηκε Τιμοκράτης οὕτοσί. Every feature of Timocrates' infractions is exactly matched by a procedural feature described at the previous paragraph, and refers back to it without introducing or presupposing any more information than what had already been said in the previous paragraph: Timocrates did not give the law the required publicity (Demosth. or. 24.26: οὔτε γὰρ ἐξέθηκε τὸν νόμον; Demosth. or. 24.26: προσέταξαν τοῖς βουλομένοις εἰσφέρειν ἐκτιθέναι τοὺς νόμους πρόσθεν τῶν ἐπωνύμων); he did not allow whoever wished so to read and study his proposal (Demosth. or. 24.26: οὔτ' ἔδωκεν εἴ τις ἐβούλετ' ἀναγνοὺς ἀντειπεῖν; Dem. 24.25: ἵν' ὁ βουλόμενος σκέψηται, κἂν ἀσύμφορον ὑμῖν κατίδη τι, φράση καὶ κατὰ σχολὴν ἀντείπῃ); he did not respect the required times (Demosth. or. 24.26: οὔτ' ἀνέμεινε οὐδένα τῶν τεταγμένων χρόνων ἐν τοῖς νόμοις; Dem. 24.25: οὐκ εὐθὺς τιθέναι προσέταξαν, ἀλλὰ τὴν τρίτην ἀπέδειξαν ἐκκλησίαν [...] ἐν δὲ τῷ μεταξύ χρόνῳ τούτῳ).

Given the structure of the argument here and the continuous references to the features described in the previous paragraph, the brief expression ἐν ᾗ τοὺς νόμους ἐπεχειροτονήσατε should be read in the light of what we find at Demosth. or. 24.25, and presuppose nothing more than what we find at Demosth. or. 24.25. It should be read, that is, as a neutral reference to the διαχειροτονία described above, which is meant to recall it, and not to add to it, set it within a wider context, correct it or modify it. In my original article, I provided a discussion of the meaning of ἐπιχειροτονεῖν and ἐπιχειροτονία that supported this reading and showed that these terms are not used in reference to a distinctive kind of procedure called ἐπιχειροτονία (which can allegedly occur in specific forms), but as generic terms that indicate respectively the act of voting upon a matter and the resulting vote upon a matter.⁴¹ Hansen concedes that my discussion of this issue

⁴¹ Canevaro 2013a, 145–146; 2013b, 87–88.

is persuasive (but fails to draw the consequences, and continues to discuss ἐπιχειροτονία as if it were a specific and distinctive kind of procedure for the rest of his article).⁴² If my discussion is persuasive, as Hansen states, then τοὺς νόμους ἐπεχειροτονήσατε needs not mean „you held an ἐπιχειροτονία τῶν νόμων“ as a specific complex procedure, but simply „you voted on the laws“, a perfectly acceptable way of referring to the διαχειροτονία (πότερον εἰσοιστέος ἐστὶ νόμος καὶνὸς ἢ δοκοῦσιν ἀρκεῖν οἱ κείμενοι) described at Demosth. or. 24.25, which does not add anything to what we learnt about it from Demosth. or. 24.25. And nowhere at Demosth. or. 24.25 (or elsewhere) does Demosthenes suggest or imply that that διαχειροτονία was part of a complex ἐπιχειροτονία τῶν νόμων, consisting of several votes and amounting to a review of the „code“ of laws by section, as described in the document. Demosth. or. 24.25 expressly describes one single διαχειροτονία „on whether new laws need to be proposed, or the existing laws are deemed to be satisfactory“, not several, and leaves no space for further votes by section. This is incompatible with what the document describes. And Demosth. or. 24.26 refers back to that description and adds nothing to it – the use of ἐπεχειροτονήσατε does not at all imply a wider procedure.

Hansen misunderstands my analysis when I state that „the obvious reading of ἐν ᾗ τοὺς νόμους ἐπεχειροτονήσατε at § 26 is therefore ‚at which you voted on the laws‘ (plural), meaning ‚on whether laws can be proposed‘“.⁴³ He counters: „But here τοὺς νόμους must be all laws, viz. οἱ κείμενοι [νόμοι], not just laws in general.“⁴⁴ This is certainly true, but my statement did not imply that τοὺς νόμους indicated generic laws, possibly the new laws to be enacted. It simply read (as Hansen does) the expression „you voted on the laws“ as a reference to the διαχειροτονία of Demosth. or. 24.25, which is explicitly described as being „on whether new laws need to be proposed, or the existing laws are deemed to be satisfactory“.⁴⁵ He concentrates on the fact that the alternative to the requirement to enact new laws in the διαχειροτονία at Demosth. or. 24.25 is phrased as δοκοῦσιν ἀρκεῖν οἱ κείμενοι (sc. νόμοι), parallel to τοὺς νόμους ἐπεχειροτονήσατε of Demosth. or. 24.26, and insists that to vote that no new laws were needed was equivalent to a vote of confidence for the laws of the city as a whole.⁴⁶ I do not deny that the alternative could be (and was) conceptualised as such, and I have argued elsewhere that the laws were understood by the Athenians as a rational and coherent whole which was the expression of a unified rationality – within

⁴² Hansen 2016, 454.

⁴³ Canevaro 2013a, 146; 2013b, 89.

⁴⁴ Hansen 2016, 454.

⁴⁵ I follow here Hansen in rendering εἰσοιστέος more strongly, see below p. 89.

⁴⁶ Hansen 2016, 453–454.

such a framework, it is unsurprising that enacting new laws could be understood and described as considering the laws overall unsatisfactory, and deciding not to enact any as a confirmation (‘a vote of confidence’) that the laws as they are, are in fact satisfactory.⁴⁷ But we are still left with only one *διαχειροτονία*, no multiple votes on various sections of the ‘code’ of laws, no individual votes on specific statutes to be rejected, no *ἐπιχειροτονία τῶν νόμων* as an overarching procedure of which several *διαχειροτονίαι* were part. Demosthenes is describing explicitly a preliminary vote on whether new laws need to be proposed, the converse of which is described as deeming the existing laws to be satisfactory. Only by a considerable sleight of hand can this be interpreted as consistent with a procedure named *ἐπιχειροτονία τῶν νόμων* that prescribed multiple *διαχειροτονίαι* on various sections of the ‘code’ of laws followed by individual votes to reject individual laws within those sections – a procedure, what is more, that did not require new law proposals to be made, and could end simply with the repealing of one or more of the existing laws.

This brings us to the other key issue: Demosthenes’ paraphrase, in accordance with the discussion at Demosth. or. 24.17–20, focuses on the issue of proposing and enacting new laws. It states explicitly that the *διαχειροτονία* is on whether a new law needs to be enacted – Hansen correctly stresses that *εἰσισιτέος* implies necessity, so a vote for this option is a statement that it is the view of the *demos* that a new law must be enacted, because the laws as they are are not satisfactory.⁴⁸ Thus, there is no escaping the fact that the procedure described by Demosthenes must end with the enactment of a new law, whereas it is unclear whether any of the existing laws necessarily needs to be repealed.⁴⁹ The procedure described in the document, conversely, always results, if successful, in the repealing of one of the existing laws, whereas enacting new laws is a possibility but not a necessity – it fully depends on volunteers who decide to bring replacement proposals.⁵⁰ In Hansen’s words „[t]he presumption is that the citizen (s) who raised the matter in the *ekklesia* and succeeded in persuading the *demos* to reject a law will propose –or perhaps even be obliged to propose – an alternative, but in the law that is not stated as a requirement“.⁵¹ It is hard to see how such a procedure as the one described in the document, which did not impose as a requirement to propose new laws might be consistent with one that is described

⁴⁷ Canevaro 2018.

⁴⁸ Hansen 2016, 452–453.

⁴⁹ This depends on whether any of the existing laws contradicts the new one, see Canevaro 2016a on the rules and procedures governing this aspect.

⁵⁰ See above p. 85.

⁵¹ Hansen 2016, 448.

as starting with a vote on whether εἰσοιστέος ἐστὶ νόμος καινὸς („a new law needs to be proposed“).

In fact, one passage, Demosth. or. 3.10, that I did not analyse in my original treatment strongly suggests that a procedure of fixed annual review of all the laws of the city (by section) whose purpose was to repeal some of them (but which did not require new laws to be proposed) could not exist in the period when the speech was delivered.⁵²

Demosthenes in the „Third Olynthiac“ (3.10), a speech of 349/8, only five years later than the „Against Timocrates“, addresses the Athenians in the Assembly with the following words: „Do not be amazed, men of Athens, if I say something that most of you will find unexpected. You should appoint lawmakers. Use these lawmakers not to pass a law – you have enough of them – but to repeal those laws that are presently harming your interests“ (trans. Trevett). He expects that the Athenians will be surprised (μὴ [...] θαυμάσητε) to hear that he advises summoning the *nomothetai* not to enact a new law (μὴ θῆσθε νόμον μηδέν), but to repeal some of the existing laws. This indicates, first, that the normal responsibility of the *nomothetai* was to enact new laws; second, that normally the procedure of *nomothesia* was concerned with proposing and enacting new laws; third, that it was unusual that the procedure might result in the repealing of one or more laws.⁵³ Such a statement would surely make no sense if there existed in Athens at the time a momentous annual procedure called ἐπιχειροτονία τῶν νόμων, taking place as a fixed item in the agenda of the Assembly at the first meeting of the year, the only procedure ever to occur in the Assembly before the discussion of the sacred business,⁵⁴ that consisted of a series of votes to reject some of the existing laws, and would result in the repeal of these laws by the *nomothetai*. One may argue that what is paradoxical here is not to have a law repealed by the *nomothetai* but rather to have a law repealed without passing an alternative law. This reading is already problematic if we accept the document at Demosth. or. 24.20–3, which provides for laws to be repealed but contains no requirement that an alternative should be proposed. But, in fact, the remark εἰσὶ γὰρ ὑμῖν ἱκανοί after the exhortation ἐν δὲ τούτοις τοῖς νομοθέταις μὴ θῆσθε νόμον μηδέν (which is what is supposed to be παράδοξον) suggests that the result of using the *nomothetai* the normal way would be to increase the number of laws, which is to be

⁵² I analyse this passage, making similar remarks but in the service of a different general point also in Canevaro 2016a, 43.

⁵³ This is further evidence against the authenticity of the document at Demosth. or. 24.33, which supplements Canevaro 2013a, 156–158; 2013b, 102–104. For the correct forum for repealing existing laws see Canevaro 2016.

⁵⁴ See below pp. 106–107 on this.

avoided because there is enough of them (Demosth. or. 24.142 and 20.91–2 also lament that there are too many laws). If the new laws that Demosthenes exhorts the Athenians not to enact were only replacement laws (let alone if no replacements were proposed), then they would not add to the number of Athenian laws, which would remain the same (or decrease), and therefore there would be no need to remark εἰσὶ γὰρ ὑμῶν ἱκανοί. This expression makes better sense if we understand it to mean that the normal role of the *nomothetai* was to enact new laws and not to repeal existing ones. But making such a statement would have been impossible if the ἐπιχειροτονία τῶν νόμων as described in the document had existed at the time. It is on the other hand fully compatible with a procedure to enact new laws involving a preliminary (double) vote in the Assembly on whether new laws need to be proposed or the existing laws are deemed to be satisfactory as they are. It is a further piece of evidence that is fully consistent with my reading of the paraphrase at Demosth. or. 24.17–19 and 24–26 (and the rest of the evidence), but which causes problems if we accept the document at Demosth. or. 24.20–3.

3.2 An annual ἐπιχειροτονία τῶν νόμων as a set item on the agenda of the Assembly?

Hansen's chief argument in support of the existence of an ἐπιχειροτονία τῶν νόμων required to be held in the first Assembly meeting of the year, on the 11th day of the first prytany, is based on a misunderstanding of Demosth. or. 24.48, which he reads out of context. In the passage, Demosthenes states that Timocrates should have first gone to the Council, which would then put the matter on the agenda of the Assembly.⁵⁵ Hansen states that „neither Timokrates nor anybody else had approached the *boule* about a new law concerning the Panathenaia to be debated at the *ekklesia*“. Because the ἐπιχειροτονία τῶν νόμων was not on the agenda of the Assembly on the 11th of Hekatombaion following a *probouleuma* of the Council, then, according to Hansen, it must follow that it was a set item on the agenda of that particular first Assembly meeting of the year. The problem with this argument is that it takes no account of the context in which the statement is found. The context makes clear that the mention of the lack of a *probouleuma* is connected to the proposal of Timocrates and to the Assembly meeting of the 12th of Hekatombaion, and not to that of the 11th, and therefore tells us nothing about whether there was a *probouleuma* for the vote on the 11th.

⁵⁵ Hansen 2016, 454–455.

At Demosth. or. 24.45 the *grammateus* reads out the law on *adeia* for discussing matters pertaining to *atimoi* and public debtors.⁵⁶ Demosthenes argues (speciously) that because of this law, Timocrates should have obtained *adeia* before proposing a law that revoked imprisonment on public debtors (Demosth. or. 24.46). The topic is here clearly the actual law of Timocrates on public debtors (not generically any law, or a law about the *Panathenaia*). At Demosth. or. 24.47 the orator follows up on this point and states that even after one has obtained the *adeia* (which Timocrates had not), one must still follow the correct procedures. From the general point Demosthenes then zooms in on Timocrates' behaviour: Timocrates not only did not obtain the *adeia* and spoke and made a proposal about matters pertaining to public debtors nevertheless (τῷ δ' οὐκ ἀπέχρησε τοῦτ' ἀδικεῖν μόνον, εἰ μὴ δοθείσης τῆς ἀδείας λέγει καὶ νόμον εἰσφέρει περὶ τούτων). In addition, he presented his law secretly, when the Council was adjourned and the others were busy with the festival, so he did not inform either the Council or the *demos* about these matters (περὶ τούτων, i. e. about his law on public debtors), he did not discuss his proposal on public debtors either in the Council or in the Assembly (ἀλλὰ καὶ προσέτ' οὐκ εἰς τὴν βουλήν, οὐκ εἰς τὸν δῆμον εἰπὼν περὶ τούτων οὐδέν). Pace Hansen, what Demosthenes is referring to here is not discussions in the Council that should have preceded the meeting and the preliminary vote (Hansen's so-called ἐπιχειροτομία) of the 11th of Hekatombaion, in which it was decided to allow law proposals and *nomothetai* were appointed (illegally)⁵⁷ to enact laws concerning the *Panathenaia*. He is referring to events after that vote, to the 12th of Hekatombaion. This is made clear by the remark that the Council was adjourned and the others were busy because of the festival – the Council was convened in the morning of every Assembly day, so it must have met on the 11th of Hekatombaion. It did not, because of the festival, meet on the 12th. Hansen's statement that „neither Timocrates nor anybody else had approached the *boule* about a new law concerning the *Panathenaia* to be debated at the *ekklesia*“, on the basis of which he argues that the ἐπιχειροτομία τῶν νόμων was a mandatory item on the agenda that did not require an *ad hoc probouleuma*, is thus incorrect. The passage says nothing about how the ἐπιχειροτομία τῶν νόμων of the 11th of Hekatombaion came to be on the agenda, because it talks about the events of the 12th.

The summary of the procedure that Timocrates should have followed provided by Demosthenes at Demosth. or. 24.48 confirms this: that Timocrates should have spoken first to the Council is explicitly linked to the law just read out, that on *adeia* (εἰδὸτα τὸν νόμον τόνδ' ὃν ἀνέγνω) – he should have convinced the

⁵⁶ On this law see Canevaro 2013b, 127–132.

⁵⁷ See below p. 104.

Council to set a vote on *adeia* on the agenda of the Assembly, which was needed (according to Demosthenes' argument here) before one could make a proposal about public debtors. Only afterwards, once a discussion about *adeia* in the Assembly had taken place (δήμῳ διαλεχθῆναι) and if the *demos* were to grant the *adeia* (εἰ πᾶσιν Ἀθηναίοις ἐδόκει), should Timocrates have written a law proposal and legislated about such matters, i. e. public debtors (γράφειν καὶ νομοθετεῖν περὶ τούτων), and in doing so he should also (καὶ τότε) have respected the times set by the law on *nomothesia*. The entire section is in fact about the need to obtain *adeia* and the relevant procedures, and the need to follow the procedures of *nomothesia* (and stick to the correct times), which had been discussed extensively at Demosth. or. 24.26–28, is recalled only at the end, as an afterthought (notice the καὶ τότε), to reiterate an argument made before. Thus, the entire section concerns Timocrates' behaviour on the 12th of Hekatombaion, when he failed to follow the correct procedures to propose a law about public debtors, and in addition failed to respect the times prescribed by the law on *nomothesia*. It says nothing about the so-called ἐπιχειροτονία τῶν νόμων of the 11th, and does not support Hansen's contention that such an ἐπιχειροτονία τῶν νόμων was a fixed item on the agenda of that meeting. Hansen's statement that „[t]he *epicheirotomia* on Hekatombaion 11 cannot have been held in consequence of Timocrates' wish to have the law on the Panathenaia changed, and the presumption is that it was an obligatory item on the agenda for the first meeting of the year“ is thus not supported by the evidence of the speech (or by evidence elsewhere). In fact, although Demosthenes throughout the speech accuses Timocrates of all sorts of procedural infractions and illegalities, the one accusation that we do not find anywhere is that the decree summoning the *nomothetai* was *aprobouleuton* (see Demosth. or. 24.27–8).⁵⁸

Apart from this passage, which does not support his contention that there existed an annual procedure called ἐπιχειροτονία τῶν νόμων, Hansen's other remarks on this matter are inconclusive. He tries to explain Demosthenes' silence in the paraphrase of the law on *nomothesia* about the fact that this was an annual procedure of approval of the laws of the city by section by hypothesising that the orator chose not to mention this because it was not an aspect in which Timocrates had acted „unconstitutionally“. ⁵⁹ This is guesswork. In fact, by the same token, Timocrates had not acted ‚unconstitutionally‘ in the context of the initial vote in the Assembly either (his illegal behaviour started with the decree that summoned the *nomothetai* for the next day, without respecting the required times and the requirements of publicity), and yet the paraphrase discusses that vote extensively. Moreover, if the ἐπιχειροτονία τῶν νόμων was held by section as prescribed in the

⁵⁸ The document found at Demosth. or. 24.27 is however a forgery, see Canevaro 2013b, 104–113.

⁵⁹ Hansen 2016, 456.

document at Demosth. or. 24.20–3, then it is hard to understand how laws on the management of the *Panathenaia* could possibly fall under the same section as a law about imprisonment for public debtors. That Timocrates' proposal did not fall under the section that had not been „confirmed“ (according to the procedure prescribed in the document) would surely constitute a further infraction worth mentioning. Hansen's explanation of the alleged silence does not work.

More generally, an annual procedure of ἐπιχειροτονία τῶν νόμων of the kind prescribed by the document and reconstructed by Hansen, the only item ever to be placed in the Assembly agenda (according to the document and to Hansen's reconstruction)⁶⁰ before sacred matters, would have constituted a momentous occasion, one of which we would expect to find some trace, somewhere.⁶¹ Yet such a procedure is not mentioned anywhere in our sources, not even here and in Demosth. or. 20, where the speaker actually takes the time to summarise the regulations on *nomothesia* in considerable detail. Hansen also hypothesises that Demosthenes' long discussion of how the ἐπιχειροτονία was conducted at Demosth. or. 24.25 may have felt superfluous if this procedure was used every time a new law was proposed.⁶² It would have been equally „superfluous“ if this was a momentous procedure (once again, the only one held before the sacred matters) which happened every year, without fail, in the first Assembly meeting of the year, and which involved the confirmation of all the laws of the city by section. But the orators do not normally refrain from explaining in detail matters that the judges know already, and often even make the point that what they are about to say is something the Athenians already know.⁶³ Hansen's remarks here are inconclusive.

Hansen also states: „in my opinion it is unlikely that every proposal for a law had to be initiated with an *epicheirotomia* about whether the laws in force were sufficient or a new law was needed (see § 21 and 25)“. He also worries that if „an *epicheirotomia* on whether a new law was needed or the laws in force were sufficient“ was needed in all instances, then „any bill could have been stopped immediately the first time it was presented to the Assembly even before it could be debated, namely if the *demos* in the preliminary *epicheirotomia* had voted that the laws in force were sufficient“. ⁶⁴ The whole procedure of *nomothesia* seems to be

⁶⁰ See below p. 106–107.

⁶¹ The existence of such a regular procedure to repeal existing laws would also contradict Hansen's (2016, 453) contention that „[t]he ancient Greeks' view on laws and legislation was that stable laws were best and the fewer changes of law, the better“.

⁶² Hansen 2016, 457.

⁶³ On the *topos* „you all know“ see Pearson 1964, 215–219; Ober 1989, 181; Pelling 2000, 28–31; Hesk 2000, 227–230; Steinbock 2013, 42–43; Canevaro 2018.

⁶⁴ Hansen 2016, 456–457.

designed to ensure as much caution as possible, in a variety of institutional settings and with as many hurdles as possible, on the possibility of enacting a new law.⁶⁵ It is not surprising that the Athenians should impose a preliminary vote even for initiating the procedure. And we do in fact have a parallel for such a blanket vote preceding any discussion and proposals in a particular area: the law on *adeia*,⁶⁶ which prescribed a preliminary generic vote on whether matters pertaining to *atimoi* and public debtors should be discussed, before any discussion could take place and proposals be made (in accordance with the normal Assembly procedures). The preliminary vote on *nomothesia* worked in precisely the same way.

Hansen admits that the epigraphic evidence shows that the Athenians could enact new laws at any point of the year, and that this is inconsistent with the procedure described in the document at Demosth. or. 24.20–3.⁶⁷ His answer to this problem is to postulate other, different *nomothesia* procedures that regulated the enactment of laws at other points of the year, and he points to the document at Demosth. or. 24.33 (and to the discussion of that document) as the law that governed one of these other procedures.⁶⁸ I have shown in two articles that nothing in Demosthenes' discussion at Demosth. or. 24.32, 34 and at Demosth. or. 20.88–102 is incompatible with the procedure described at Demosth. or. 24.17–19 and 24–26, and that several elements strongly suggest that all these passages refer to one law and to one procedure, which allowed for laws to be enacted at any point of the year.⁶⁹ That laws could be enacted at all points of the year is clear from the inscriptional record: IG II³ 1 445 was enacted on the 8th of Skirophorion, IG II³ 1 320 in the ninth prytany, IG II² 140 in the fifth, the seventh or the tenth prytany.⁷⁰

⁶⁵ See in general Canevaro 2015.

⁶⁶ On which see Canevaro 2013b, 127–132.

⁶⁷ Hansen 2016, 456.

⁶⁸ This is the line he also took in Hansen 1985. I argue elsewhere that that document is also a forgery, see Canevaro 2013a, 156–158; 2013b, 102–104. In any case, the only reason for which one needs to postulate that the paraphrase of that law (or the document itself at Demosth. or. 24.33) describes a different, separate procedure, is to defend the reliability of the so-called *ἐπιχειροτομία τῶν νόμων* of Demosth. or. 24.20–23 in the face of the evidence for laws enacted at all points of the year. There is nothing in the text itself that requires us to postulate a separate procedure, see Canevaro 2013a, 149–150 and 2016.

⁶⁹ Canevaro 2013a and 2016.

⁷⁰ Alessandrì 1980 noted that the law must have been enacted in the tenth prytany, because it refers to the Council of the next year as in charge of supervising the collection of the *aparchai*. As this collection took place in the ninth and the tenth prytanies, if the law had been enacted earlier on in the year (and certainly if it had been enacted in the first prytany, as the document at Demosth. or. 24.20–23 requires), then it would refer to the current Council, not to the next. I want to thank Edward Harris for pointing me to this reference and its implications.

Hansen does not bring to the discussion any evidence in the texts of the orators (or in other sources) that contradicts this. Ultimately, the only reason for which he invents different procedures that allowed to enact laws at all points of the year (and for which there is no evidence) is to accommodate the document at Demosth. or. 24.20–3 in his reconstruction. Nothing, apart from the document itself, requires postulating such multiple procedures to account for what we know from the sources.⁷¹ But, as I noted above in my methodological remarks, a reconstruction of the *nomothesia* procedures built on the basis of what we find in the document, and devised to accommodate the document, cannot at the same time serve as confirmation of the document's authenticity. The argument becomes circular, unless the document has some independent and previous claim to authenticity – and it does not, because, as recognized by Hansen, it is a later addition to the speech, and many such additions are forgeries. The enactment of laws in Athens at all points of the year is strong evidence against the authenticity of the document at Demosth. or. 24.20–3 and against the historicity of the procedure it describes, unless the existence of different procedures and of an annual *ἐπιχειροτονία τῶν νόμων* can be proven independently. But, as we have seen, there is no evidence in the sources of such a procedure.

Hansen's only further piece of evidence for the existence of such a procedure is comparative: an (allegedly) parallel procedure, described at Aischin. Ctes. 3.38–40, that, according to him, prescribes a similar (but separate) kind of annual review of laws.⁷² Hansen however misreads the details of Aeschines' account, and therefore fails to realise that this procedure has virtually nothing in common with the so called *ἐπιχειροτονία τῶν νόμων*. Hansen's summary of Aeschines' account is as follows:

„[The] law [...] requires the *thesmothetai* to keep an eye on the laws of Athens: if they find invalid laws in the corpus, or inconsistent laws, or more than one law on the same point, the relevant laws are to be put before the people, who will set up a board of *nomothetai* to settle the matter. This inspection of the corpus of laws must be undertaken once every year. The *prytaneis* are requested to summon an *ekklesia* where *nomothetai* are an obligatory item on the agenda, and, as in the *ekklesia* held on Hekatombaion 11, the procedure is introduced by a *diacheirotomia*. To have an annual inspection of the laws in

⁷¹ The Occam's razor invoked by Hansen at p. 455 should rather apply here.

⁷² For previous treatments of this procedure (mentioned also, with reference to Aeschines, at Theophrastus, *Nomoi* fr. 1 Szegedy-Maszak), and its relationship with the *ad hoc* commissioners elected by the people to remove contradictory laws mentioned in Demosth. or. 20.91, see MacDowell 1975, 72; Rhodes 1984, 60; Hansen 1985, 356 (with Canevaro 2016b, 345–346 on Demosth. or. 20.91).

force in order to eliminate invalid laws and conflicting laws is parallel to having an annual inspection of the laws in order to decide whether new laws are needed.⁷³

From a close analysis of Aeschines' words, we see that Hansen has arbitrarily read into the passage steps and features that are not attested in, or justified by, the text, and that are based on his reading of the so-called ἐπιχειροτονία τῶν νόμων. Aeschines starts his discussion by claiming that it is impossible that two contradictory laws on the same topic (the award of crowns in the theatre of Dionysus) may exist, because the lawgiver has clearly prescribed that the *thesmothetai* every year must reconcile the laws after a careful investigation and examination (διαρρήδην προστέτακται τοῖς θεσμοθέταις καθ' ἕκαστον ἐνιαυτὸν διορθοῦν ἐν τῷ δήμῳ τοὺς νόμους, ἀκριβῶς ἐξετάσαντας καὶ σκεψαμένους), in case there are contradictions, invalid laws or multiple laws on the same subject (εἴ τις ἀναγέγραπται νόμος ἐναντίος ἑτέρῳ νόμῳ, ἢ ἄκυρος ἐν τοῖς κυρίοις, ἢ που εἰσὶ νόμοι πλείους ἐνὸς ἀναγεγραμμένοι περὶ ἐκάστης πράξεως). Notice that the passage does not prescribe a specific procedure to be held every year, with fixed steps (and a vote in the Assembly) and a fixed time, to revise or amend the laws. It simply requires that every year the *thesmothetai* „keep an eye“ (in Hansen's words) on the laws for the purpose of fixing problems (presumably because they are the main magistrates in charge of the lawcourts), checking carefully for irregularities. But this must not necessarily result in an actual procedure occurring in the Assembly at a set point of the year. In fact, only if they find irregularities (κάν τι τοιοῦτον εὕρισκωσιν), they must act. And what they are required to do is not to go to the Assembly for a preliminary vote to initiate the procedure, but rather to post the irregular law(s) before the monument of the Eponymous Heroes, exactly the same as proposers of new laws are required to do after the preliminary vote that allows new proposals (in my reconstruction) or after the so-called ἐπιχειροτονία τῶν νόμων (in Hansen's and the document's procedure). No examination of the laws in the Assembly, the „review“ vote for which this procedure is, according to Hansen, a parallel, is to be found in Aeschines' account. All Aeschines states is that τοὺς δὲ πρυτάνεις ποιεῖν ἐκκλησίαν ἐπιγράψαντας νομοθέτας. This has been read in two ways: either as „the *prytaneis* shall hold an assembly labelling it *nomothetai*“, in Piérart's interpretation,⁷⁴ or as „the *prytaneis* shall hold an assembly putting the appointment of *nomothetai* on the

⁷³ Hansen 2016, 457–458.

⁷⁴ This is Piérart's 2000 interpretation, who rejects Dobree's emendation of νομοθέτας into νομοθέταις.

agenda“, in Rhodes’ interpretation (supported by Hansen).⁷⁵ I shall return below to the issue of which interpretation is more consistent with the context and wording of the passage. For the time being, this is immaterial: if the first interpretation is correct, then this sentence brings us straight to the last stage of the procedure, before the *nomothetai*; if the second interpretation is correct, it brings us to the Assembly in which the decree of appointment of the *nomothetai* is enacted, which in the procedure for which this account should allegedly be a parallel happens several Assembly meetings later than the preliminary vote (in my reading) or later than the so-called ἐπιχειροτονία τῶν νόμων (in Hansen’s and the document’s procedure), and does not involve any vote on actual laws or proposals.⁷⁶ In both scenarios, the mention of the ἐκκλησία in the passage is relevant to a stage of the procedure later than the posting of (new or old) laws before the monument of the Eponymous Heroes, and therefore, *pace* Hansen, corresponds (and is parallel) not to an annual preliminary vote before the Assembly (the so-called ἐπιχειροτονία τῶν νόμων) that initiates the overall procedure, but to the vote on the decree of appointment of the *nomothetai* of Demosth. or. 24.25, whose existence neither of us doubts. Hansen cites Aischin. Ctes. 3.38–40 as a parallel for an annual fixed vote in the Assembly to initiate a procedure to check the laws, yet Aeschines does not mention any vote on laws in the Assembly, to be held annually as an obligatory matter of business, and does not therefore provide a parallel.

Hansen also states, in connection with Aischin. Ctes. 3.39, that „[t]he *prytaneis* are requested to summon an *ekklesia* where *nomothetai* are an obligatory item on the agenda, and, as in the *ekklesia* held on Hekatombaion 11, the procedure is introduced by a *diacheirotomia*“. In fact, this passage is not as straightforward as in Hansen’s paraphrase, and far from supporting his argument, it introduces further problems for the document. The text of the manuscripts states that if the *thesmothetai* find that there are contradictions in the laws, they must post the relevant laws before the monument of the Eponymous Heroes. After this, the *prytaneis* must hold an Assembly ἐπιγράφαντας νομοθέτας (see above), and at that Assembly meeting the *epistates* of the *proedroi* must hold a *diacheirotomia* on the question of the removal of one set of laws and the retention of the other (τὸν δ’ ἐπιστάτην τῶν προέδρων διαχειροτονίαν διδόναι τῷ δήμῳ τοὺς μὲν ἀναιρεῖν τῶν νόμων, τοὺς δὲ καταλείπειν), so that there may be only one law on each issue (ὅπως ἂν εἷς ἡ νόμος καὶ μὴ πλείους περὶ ἐκάστης πράξεως). So, although it is clear from the *paradosis* that the διαχειροτονία is held before the *demos*, it is also clear that the effect of the διαχειροτονία is that some laws are

⁷⁵ This is Rhodes’ 2003 interpretation, followed in Hansen 2016, 457.

⁷⁶ For the issue of how many Assembly meetings later, see below pp. 114–116.

retained and some others are repealed, straightaway, so that, as a result, there is only one law on each subject, and no contradictory laws. Now, for this vote to have this effect, the *διαχειροτονία* mentioned here must be the final conclusive vote, not a previous, preliminary vote (as in the so-called *ἐπιχειροτονία τῶν νόμων*) before the Assembly, which in its normal incarnation has no power to pass or repeal laws. And such a conclusive vote is, according to all the evidence, meant to be held before the *nomothetai*. The obvious conclusion is that this particular Assembly is the *nomothetai*, and this is in fact, *pace* Rhodes, the most obvious reading of τοὺς δὲ πρυτάνεις ποιεῖν ἐκκλησίαν ἐπιγράψαντας νομοθέτας: „the *prytaneis* shall hold an assembly labelling it *nomothetai*“.⁷⁷ And the *διαχειροτονία* is in fact mentioned, in this passage, after the posting of the irregularities before the Eponymous Heroes, and after the mention of the *nomothetai*. That this *διαχειροτονία* is held before the *nomothetai* is confirmed by the next paragraph (Aischin. Ctes. 3.40), straight after the *grammateus* reads out the law, where Aeschines summarises what has just been read out and applies it to the case at hand, stating that if two contradictory laws had existed, „it is inevitable [...] that once the *thesmothetai* had discovered them and the *prytaneis* had handed them over to the *nomothetai*, one of the laws would have been annulled“ (ἐξ ἀνάγκης οἶμαι τῶν μὲν θεσμοθετῶν ἐξευρόντων, τῶν δὲ πρυτάνεων ἀποδόντων τοῖς νομοθέταις ἀνήρητ’ ἂν ὁ ἕτερος τῶν νόμων). The detailed description of the procedure of Aischin. Ctes. 3.39 (τοὺς δὲ πρυτάνεις ποιεῖν ἐκκλησίαν ἐπιγράψαντας νομοθέτας, τὸν δ’ ἐπιστάτην τῶν προέδρων *διαχειροτονίαν* διδόναι τῷ δήμῳ τοὺς μὲν ἀναιρεῖν τῶν νόμων, τοὺς δὲ καταλείπειν) is reformulated, more synthetically, as τῶν δὲ πρυτάνεων ἀποδόντων τοῖς νομοθέταις ἀνήρητ’ ἂν ὁ ἕτερος τῶν νόμων:⁷⁸ the *διαχειροτονία* mentioned by Aeschines is the final vote before the *nomothetai*, not a „review“ held at a previous stage, because, according to Aeschines’ account, the ἐκκλησία in question is the *nomothetai*. Schöll saw that this reading was the only possible one and, as a result, in order to reconcile Aeschines’ account with the document at Demosth. or. 24.20–3 (which states that the *nomothetai* are selected from those that have sworn the Heliastic Oath), chose to emend the passage: he emended, with Dobree (and most later editors) νομοθέτας into νομοθέταις (after ἐπιγράψαντας), and deleted τῷ δήμῳ (after *διαχειροτονίαν* διδόναι) to eliminate all features that show that the *nomothetai*

⁷⁷ See Piérart 2000, *pace* Rhodes 2003.

⁷⁸ The parallelism between the general description of the procedure at Aischin. 3.39 and the application to the current case at Aischin. 3.40 makes it very clear that the action of the *prytaneis* is linked directly to the session of the *nomothetai*, and not to an Assembly appointing the *nomothetai*. This decisively supports Piérart’s 2000 view against Rhodes’ 2003.

were here a special session of the Assembly.⁷⁹ It is clear therefore that the procedure at Aischin. Ctes. 3.38–40 is not a parallel for the ἐπιχειροτονία τῶν νόμων as presented in the document and reconstructed by Hansen (a preliminary, not final review), just further evidence of the final and decisive vote on laws by the *nomothetai*, which is not an item of contention. Aischin. Ctes. 3.39–40 is moreover explicit evidence that the *nomothetai*, at least in this instance and at this time, were in fact a special session of the Assembly, which is in direct contradiction with the document at Demosth. or. 24.20–23, which states that the *nomothetai* are selected from those that have sworn the Heliastic Oath (τοὺς δὲ νομοθέτας εἶναι ἐκ τῶν ὁμωμοκότων τὸν ἡλιαστικὸν ὄρκον).⁸⁰

The procedure described by Aeschines is thus not a parallel for the so-called ἐπιχειροτονία τῶν νόμων. In fact, if an ἐπιχειροτονία τῶν νόμων as a general annual review of all the laws held at the first Assembly meeting of the year had existed, it is hard to understand why the action of the *thesmothetai* in charge of checking the regularity of the existing laws could not be integrated within it – why did they not simply report to the Assembly about their findings over the year of their tenure of office at the ἐπιχειροτονία τῶν νόμων, the key event in the political year for revising the laws?

To conclude, *pace* Hansen, nothing in the paraphrase of Demosthenes can be read to refer to an ἐπιχειροτονία τῶν νόμων as a fixed item in the agenda of the first Assembly of the year, and there is no reason (internal or external to the text) to postulate that references to such a feature may have been omitted. None of the passages discussed by Hansen supports this reading, and Demosthenes' text (in combination with Demosth. or. 20 and the evidence of inscriptions) quite unambiguously describes a procedure that could be started at any point of the year, one that is incompatible with Hansen's reconstruction.

3.3 An ἐπιχειροτονία τῶν νόμων in two stages?

As noted in section 2.1, Hansen agrees with my analysis of the meaning of ἐπιχειροτονεῖν and ἐπιχειροτονία as a general expression for the act of voting on a matter, and the vote itself on a matter.⁸¹ There is no evidence that by these terms

⁷⁹ Schöll 1886. Cf. Adams 1919, 339 n. 4, in the Loeb, who also deletes τῷ δήμῳ and changes νομοθέτας into νομοθέταις.

⁸⁰ There is no independent evidence that this was the case, and Demosth. or. 20.93 cannot be read to confirm it, see Canevaro 2016a, 46–49, 55–56. I plan to come back to the issue of the identity of the *nomothetai* in a separate contribution.

⁸¹ Hansen 2016, 454.

the Athenians described specific procedures – they were simply ways of describing votes that focused on the issue on which the vote was cast. Despite accepting my analysis, Hansen proceeds throughout his article to treat ἐπιχειροτονία as a distinctive kind of procedure, viewed as such by the Athenians, occurring in two specific forms. Thus, in a section entitled „Three types of *epicheirotomia*“, Hansen describes the two cases in which ἐπιχειροτονία was allegedly used, claims that I identify the so-called ἐπιχειροτονία τῶν νόμων as similar to one of the two, and argues that it should rather be understood as similar to the other case.⁸² The two cases identified by Hansen are that of the ἐπιχειροτονία about ostracism, and that of the vote on the magistrates. The first, described at Aristot. Ath. pol. 43.5, is a simple vote on whether the Athenians should hold an *ostrakophoria* or not (ἐπὶ δὲ τῆς ἕκτης πρυτανείας πρὸς τοῖς εἰρημένοις καὶ περὶ τῆς ὀστρακοφορίας ἐπιχειροτονίαν δίδοασιν εἰ δοκεῖ ποιεῖν ἢ μὴ). The second is the procedure for τὰς ἀρχὰς ἐπιχειροτονεῖν εἰ δοκοῦσι καλῶς ἄρχειν held at every *ekklesia kyria* and described at Aristot. Ath. pol. 43.5 and 61.2 (see also Aristot. Ath. pol. 61.4 and Demosth. or. 48.27): a procedure to sanction or approve the works of the magistrates.

While the case of the preliminary vote on whether the *ostrakophoria* should occur is a perfect parallel for the procedure I describe,⁸³ Hansen claims that the vote about the magistrates is a parallel for the procedure described in the document, and proceeds to postulate silences and omissions in Demosthenes' paraphrase to justify why the paraphrase does not in fact describe a two-tier ἐπιχειροτονία as the document does. There are several problems with his analysis: first, it is far from clear that Aristot. Ath. pol. 43.5, 61.2 61.4 and Demosth. or. 48.27 describe in fact a two-tier ἐπιχειροτονία – this is what Hansen reads into these passages, but the supporting evidence is meagre; second, the paraphrase of Demosthenes cannot be read to describe a two-tier ἐπιχειροτονία – it clearly describes one single διαχειροτονία about whether new laws must be enacted or the existing laws are considered satisfactory, and no second-stage votes about individual laws; third, even if Hansen's reading of the paraphrase were acceptable (and it is not), the procedure he describes still does not conform to that of the document, because the paraphrase describes unequivocally one single 'first'

⁸² Hansen 2016, 458–462.

⁸³ Note, however, that I nowhere claim that there existed two models of ἐπιχειροτονία and that the ἐπιχειροτονία τῶν νόμων conformed to that of the ostracism. This is how Hansen represents my argument. In fact, I argue (Canevaro 2013a, 145–146) that this is a generic term, and the vote on the ostracism is just a parallel for the kind of procedure I describe, as the vote on *adeia* also is (see above pp. 87–89).

vote, whereas the document has multiple ‘first’ votes on various sections of the law.

I shall first discuss the scanty evidence for the vote of confirmation of the magistrates held in each *ekklesia kyria*. Hansen states that „[i]t was a general vote whether or not the *archai* were performing their duties to the people’s satisfaction. A general vote of no confidence was followed by a second round in which any citizen could charge any magistrate or board of magistrates with misconduct in office. In each case a new vote of confidence was taken and a vote of no confidence resulted in suspension of the magistrate or the board of magistrates in question, whereafter the case was referred to a *dikasterion*.“⁸⁴ This appears to be a very precise description of the procedure, yet is by and large the product of guesswork. The main evidence cited by Hansen for a general vote on all the magistrates, is Aristot. Ath. pol. 43.5: δεῖ τὰς ἀρχὰς ἐπιχειροτονεῖν εἰ δοκοῦσι καλῶς ἄρχειν. But this passage does not clarify that there existed an ἐπιχειροτονία τῶν ἀρχῶν as one single vote on all magistrates; it states that at each *ekklesia kyria* the law required to vote on the magistrates (τὰς ἀρχὰς ἐπιχειροτονεῖν), which can be read either as the description of one vote, or as the description of several different votes on each one of them (or on boards of them). Aristot. Ath. pol. 61.2 mentions that an ἐπιχειροτονία δ’ αὐτῶν (of the *strategoï*) ἐστὶ κατὰ τὴν πρυτανεῖαν ἐκάστην, and continues that κἂν τινα ἀποχειροτονήσωσιν, they need to be tried in a lawcourt. Hansen reads this as one example of the second stage of the procedure, after the preliminary single vote on all magistrates, when there are individual votes on individual magistrates or boards. But this is Hansen’s interpretation – the passage simply refers to a vote on the *strategoï* as an ἐπιχειροτονία, and nowhere states that this vote followed a preliminary vote on all magistrates. In fact, it states unequivocally that the vote on the *strategoï* occurred in every prytany, which is incompatible with Hansen’s interpretation, because, if Hansen is right, the vote on the *strategoï* would occur only if the preliminary vote on all magistrates was one of rejection, and if someone denounced the *strategoï*. Likewise, Aristot. Ath. pol. 61.4 states that the *hipparchoi* were also subjected to an ἐπιχειροτονία – no mention of a preliminary vote on all magistrates, and of this ἐπιχειροτονία being dependent on the result of that vote. Finally, the last passage cited by Hansen, Demosth. or. 58.27, also does not support his reconstruction: here we have one of the *thesmothetai* who is rejected (with the whole board) at the ἐπιχειροτονία, in the plural (αὐτὸς ἀπεχειροτονήθη τῶν ἐπιχειροτονίων οὐσῶν). There is, once again, no mention of a preliminary vote about all magistrates, and the orator mentions the rejection in the context of a series of votes. To sum up, none of these passages explicitly supports the reconstruction of this procedure as

⁸⁴ Hansen 2016, 458–459, following Hansen 1975, 41–44.

one involving two stages in the Assembly (before rejected magistrates were brought to the lawcourts). Hansen postulates that the expressions hide two stages, a preliminary single vote on all magistrates at one time, followed by individual votes on individual magistrates denounced by anyone of the Athenians. And, accordingly, he reads Aristot. Ath. pol. 61.2, 61.4 and Demosth. or. 58.27 as references to the second stage. This reconstruction may be possible, but, as we have seen, it creates problems with Aristot. Ath. pol. 61.2 and 61.4, which state that votes on individual magistrates happened in every prytany, independently of any preliminary vote, and is not directly supported by any of the passages – it is nothing more than a hypothesis, certainly not a fact. And, as such, it cannot be used, as if it were a fact, as a parallel for the procedure described in the document. There is in fact no straightforward parallel in the sources for the two-tier procedure imagined by Hansen for the ἐπιχειροτονία τῶν νόμων.

Hansen builds his argument for a reconstruction of the so-called ἐπιχειροτονία τῶν νόμων as a procedure in two stages before the Assembly that led to the rejection of specific laws (in accordance with the document) on a parallel that simply does not exist.⁸⁵ He then proceeds to read the paraphrase of the law so as to accommodate this reconstruction, but his reading is unwarranted by the text. It is worth quoting Hansen's account of the paraphrase in full:⁸⁶

„At the *ekklesia* held on the eleventh day of the first prytany = Hekatombaion 11 when the *epicheirotomia* took place, the people voted that the laws in force were not sufficient and that a new law must be passed. Thereafter Timokrates addressed the Assembly and argued that the law (or laws) about the Panathenaia were insufficient and he persuaded the people that the administration of the coming Panathenaia demanded an immediate change of the law(s). If we accept the document at 20–23 as authentic, that debate must have been followed by a further *cheirotomia* resulting in an *apocheirotomia* of the law – or one of the laws – about the Panathenaia. [...] Thereafter Timokrates or one of his associates proposed and carried a *psephisma* that a session of *nomothetai* be held on the following day, in spite of the fact that Hekatombaion 12 was an annual festival day devoted to the Kronia and no meeting of the *boule* could normally be held because of the festival. Nevertheless a session of the *nomothetai* took place on Hekatombaion 12, and here Timokrates proposed and carried his law.“

The problem with Hansen's account of the paraphrase is that its key part – the section underlined here, which should integrate the two-stage procedure in the

⁸⁵ Cf. Hansen 2016, 459–460.

⁸⁶ Hansen 2016, 460–461.

paraphrase – is nowhere to be found in the text of Demosthenes. Hansen has postulated the omission by the orator of a key stage of the procedure, and a key passage of the law just read out, on the basis of nothing else but the document itself. First of all, there is nothing in the paraphrase that confirms that Timocrates, after a first vote on the laws but before the second vote on individual laws, talked about the law on the *Panathenaia*. Hansen cites three passages as evidence of this, all out of context, and all referring to different stages of the procedure: Demosth. or. 24.26: ἐπὶ τῇ τῶν Παναθηναίων προφάσει; Demosth. or. 24.28: ἴν' ὡς κάλλιστα γένοιτό τι τῶν περὶ τὴν ἑορτήν; Demosth. or. 24.29: περὶ μὲν τούτων, τῆς διοικήσεως καὶ τῶν Παναθηναίων οὔτε χεῖρον' οὔτε βελτίω νόμον οὐδέν' εἰσήνεγκεν οὐδεὶς. The second and the third quotes refer respectively to the decree of appointment of the *nomothetai* and to the actual session of the *nomothetai*, so have nothing to do with the so-called ἐπιχειροτονία τῶν νόμων of the 11th of Hekatombaion. The first passage, Demosth. or. 24.26, also clearly refers to the debate that led to the enactment of the decree of appointment of the *nomothetai* (καθέξεσθαι νομοθέτας διὰ ψηφίσματος ἐπὶ τῇ τῶν Παναθηναίων προφάσει). Thus, *pace* Hansen, all the relevant passages clearly set the discussion of the deficiencies of the laws about the *Panathenaia* in the context of the enactment of the decree of appointment of the *nomothetai* (which should have been enacted several Assembly meetings later but was enacted illegally at the same meeting as the initial vote). That debate did not take place after a first vote about all the laws and before individual votes on particular laws, that is, during a so-called ἐπιχειροτονία τῶν νόμων: the text is explicit about this. Hansen's account (with the supporting references he provides quoted out of context) seriously misrepresents the text of the paraphrase.

After introducing a debate about the *Panathenaia* during the so-called ἐπιχειροτονία τῶν νόμων for which there is no evidence, Hansen states that „[i]f we accept the document at 20–23 as authentic, that debate must have been followed by a further *cheirotomia* resulting in an *apochirotomia* of the law – or one of the laws – about the *Panathenaia*“. He recognizes that there is no trace of any of this in the text, but muses that Demosthenes may have omitted this step because Timocrates did not do anything wrong in this context. Yet Demosthenes' account at Demosth. or. 24.25 is very precise and articulates a very tight temporal sequence, in which there is no room for the additional stage introduced by Hansen. The orator starts his paraphrase of the law just read out stressing precisely the temporal sequence of the various steps: the διαχειροτονία about whether a new law must be proposed or the laws are sufficient as they are is introduced with the words καὶ πρῶτον to mark its priority in the procedure. After this step (μετὰ ταῦτα), Demosthenes stresses that one cannot immediately enact a new law, but must wait for the third Assembly meeting, at which point the Athenians are to

discuss the decree of appointment of the *nomothetai*. The wording of the sentence strongly suggests that μετὰ ταῦτα refers precisely to the διαχειροτονία in the previous sentence, and to nothing more (and makes the omission of a key step very unlikely): μετὰ ταῦτα δέ is followed by the protasis ἂν χειροτονῇτ' εἰσφέρειν, with εἰσφέρειν recalling εἰσοιστέος of the διαχειροτονία – it is specifically the vote that new laws must be proposed that is followed, and is the condition for, the discussion of the appointment of the *nomothetai* and the enactment of new laws. The wording does not allow for further steps of the procedure being hidden in these words. And, in fact, in the next sentence, Demosthenes proceeds, with another strong temporal expression (ἐν δὲ τῷ μεταξύ), to list other requirements to be fulfilled between the two relevant Assembly meetings, but nothing more is to happen in the first Assembly meeting after the *demos* χειροτονεῖν εἰσφέρειν. The structure of the paraphrase, with its precise temporal sequence, makes it very unlikely that Demosthenes may have failed to mention a key second step of the initial procedural stage. And, as we have seen, there is no evidence whatsoever (outside the document) that suggests that such a second step ever existed, and no clear parallel for anything resembling it. Postulating such a step is special pleading, motivated only by the attempt to save the document at all costs.

There is one more major problem with Hansen's argument in this section. Hansen uses the section to make the twin arguments that Demosthenes' paraphrase can be read as describing (or, rather, hiding) a procedure in two steps, with an initial general διαχειροτονία of ratification of all the laws, followed by multiple διαχειροτονίαι on specific laws, and that there is a parallel for such a procedure. I have shown that both these claims are untenable. But even if we were, hypothetically, to accept them, the procedure described is still not consistent with the document. Hansen forgets here that the document does not prescribe one general διαχειροτονία of ratification on all the laws followed by specific διαχειροτονίαι on individual laws. It prescribes, as the initial step, a series of διαχειροτονίαι on the laws by specific sections (see below, pp. 85–89), which appear to be followed by further votes on individual laws. There is no general διαχειροτονία on all the laws in the document, and, conversely, the paraphrase describes the initial stage unequivocally as one single διαχειροτονία (καὶ πρῶτον μὲν ἐφ' ὧν ἐποίησαν διαχειροτονίαν, πότερον εἰσοιστέος ἐστὶ νόμος καινὸς ἢ δοκοῦσιν ἀρκεῖν οἱ κείμενοι), not as a series of votes by section. Hansen's argument in this section is unconvincing: he fails to provide a parallel for the procedure in two stages he envisages, he stretches the meaning of the paraphrase beyond recognition to make it hypothetically compatible with the document; finally, even then, the procedure he describes is not in fact the same as the one in the document.

4. The document at Demosth, or. 24.20–3: problems with individual features

I now turn to discussing Hansen's objections against the specific eight problems that I identified with the wording of the document

1) I noted that „[t]he expression „after the herald has said the prayers“ (ἐπειδὴν εὐχῆται ὁ κήρυξ) to indicate that a matter must be the first item on the agenda of an Assembly meeting, just after the sacrifices, is unparalleled in Athenian inscriptions“.⁸⁷ Hansen's counterargument does not disprove this basic fact – he admits that this is the case, and that this expression is unparalleled in inscriptions and in literary sources. He notes however that we never find any reference at all in inscriptions to the ritual that initiated Assembly meetings, and points to Aischin. Ctes. 1.23 as evidence that the prayers by the herald existed. This is not, however, in doubt. The problem with the expression is that it is entirely unparalleled. In my short discussion I pointed out that the customary expression, in Athens and elsewhere, for indicating the priority of an item in the agenda of the Assembly was μετὰ τὰ ἱερά, which I translated as „after the sacrifices“, referring to Harris for this interpretation of τὰ ἱερά.⁸⁸ Hansen spends much of his discussion questioning Harris' interpretation and reinstating the reading of the expression as „after the sacred business“.⁸⁹ But the expression is problematic with either interpretation, and potentially more problematic with Hansen's. If Harris is right about τὰ ἱερά, then we have in the document an unparalleled expression with a meaning that is consistently conveyed, with hundreds of examples, in Greek inscriptions from across the Greek world by the formula μετὰ τὰ ἱερά.⁹⁰ If Hansen is right, then the document details a practice that has no parallel anywhere in the Greek world: setting an item on the agenda before the „sacred business“. Again and again, Greek decrees and laws give particular items priority in the agendas of Assemblies from all over the Greek world, but never once does this go as far as giving them priority over sacred business, which comes always, invariably, first. It is remarkable that even when the Hellenistic kings and the Romans, and matters pertaining to them, come into play, τὰ ἱερά still had priority, and the expressions we find are μετὰ τὰ ἱερά καὶ τὰ βασιλικά (e.g. IG XII 6 1, 18; 22; 24; 25; 30; 150) and μετὰ τὰ ἱερά καὶ Ῥωμαίους (or similar: e. g. SEG 13.285; IG XII 8, 640). The evidence shows overwhelmingly that in the Assemblies

⁸⁷ Canevaro 2013a, 152; 2013b, 97.

⁸⁸ Harris 2006, 91–92.

⁸⁹ Hansen 2016, 463–464.

⁹⁰ See Canevaro 2013a, 152 n. 43; 2013b, 97 n. 55.

of the Greek *poleis* the „sacred business“ came first, with no exception, and the sheer size of the evidence strongly suggests that this was a basic principle by which the Greeks always abided. Thus, if we were to accept Hansen's interpretation of τὰ ἱερά, then the document would prescribe something entirely unheard of in Greek Assemblies: having an item in the agenda placed before the „sacred business“. To sum up, whatever our reading of the meaning of τὰ ἱερά, what the document states is entirely unparalleled (in the face of very abundant relevant evidence) and unacceptable.

2) My second point dealt with the expression ἐπιχειροτονίαν ποιεῖν τῶν νόμων.⁹¹ I noted that the verb in the document (in the active) has no subject, but allowed that the subject may be understood, in which case the subject should be the *proedroi* or the people. I pointed out however that if this is the case, then the expression is entirely unparalleled in Classical sources, as all the evidence from inscriptions shows that the verb used for the *proedroi* putting a matter to the vote was ἐπιψηφίζειν and that the *demos* was always said to (ἐπι- or δια-)χειροτονεῖν (or cognates). As for the literary evidence, „the verb used with χειροτονίαν (or derivatives) is invariably δίδωμι“. ⁹² My point therefore was that the expression ἐπιχειροτονίαν ποιεῖν is unparalleled to indicate both that the *proedroi* put something to the vote, and that the *demos* votes on something. Both meanings are consistently conveyed in Classical sources (literary and epigraphic) by other expressions.⁹³ This is another suspicious feature of the document.

Hansen's response seems to misunderstand my argument. Most of his discussion on this point is concerned with showing that imperative/infinitives without a subject are found in two Athenian laws (Rhodes-Osborne 25 l. 3; 26 ll. 6–7). But the problem of the expression that I highlight is not the absence of a subject, but the fact that the expression is unparalleled with this meaning, and that the relevant meaning is consistently conveyed in our contemporary sources by other expressions. Hansen does not provide any counterarguments to this. His final statement that „it is perfectly possible that Demosthenes' paraphrase of the law on *nomothesia* is a reflection of the document inserted in the text“ is unwarranted. On the one hand, when at Demosth. or. 24.25 we find the verb ποιεῖν, its subject is the *nomoi* (as Hansen recognizes), not the *demos* or the *proedroi* as

⁹¹ Canevaro 2013a, 152; 2013b, 97.

⁹² I discuss the only two exceptions, Demosth. or. 24.25 (where the subject is the *nomoi* that „set“ a διαχειροτονία as a procedural step of *nomothesia*) and Demosth. or. 21.6 (where ποιεῖν with καταχειροτονία indicates that the *demos* has made a condemnation of someone, and not simply voted on a matter) at Canevaro 2013a, 152 and n. 45; 2013b, 97 and n. 57.

⁹³ ποιεῖν with χειροτονία becomes common in much later Greek, which suggests that the document is probably a text composed in the post-Classical period, see Canevaro 2013a, 152 and n. 45; 2013b, 97 and n. 57.

understood in the document, and its object is διαχειροτονίαν, which in Hansen's own reconstruction is not equivalent to the ἐπιχειροτονία, the first being read by Hansen as one of the (double) votes on particular laws or sections of laws within the wider procedure of ἐπιχειροτονία.⁹⁴ On the other hand, when we find at Demosth. or. 24.26 τοὺς νόμους ἐπεχειροτονήσατε, with the Athenians (i. e. the *demos*) as the subject, there is no ποιεῖν, and the expression with the verb ἐπιχειροτονεῖν is, unlike that of the document, consistent with the use of (ἐπι- or δια-)χειροτονεῖν (or cognates) in the inscriptional record. That the paraphrase by Demosthenes is more consistent with epigraphic usage than the document is evidence against the authenticity of the document.⁹⁵

3) In my original analysis, I pointed out three difficulties in the sentence of the document detailing the categories by which the laws are to be voted and reviewed, apart from the basic issue that the paraphrase mentions clearly one single preliminary (double) vote, whereas the document has four⁹⁶: πρῶτον μὲν περὶ τῶν βουλευτικῶν, δεύτερον δὲ τῶν κοινῶν, εἴτα οἱ κεῖνται τοῖς ἑννέα ἄρχουσιν, εἴτα τῶν ἄλλων ἀρχῶν.⁹⁷ The first problem is grammatical: because the expression that governs the period is ἐπιχειροτονίαν ποιεῖν τῶν νόμων, if the categories are to be for instance „the bouleutic laws“, „the laws of the Nine Archons“ and „the laws of the other magistrates“,⁹⁸ then we would need, first, τῶν βουλευτικῶν without περὶ (for the adjective to qualify τῶν νόμων). Hansen „cannot find fault with having an objective genitive (τῶν νόμων) specified by a prepositional group where the genitive is governed by περί“.⁹⁹ Yes, but if this is the case, then the adjective βουλευτικῶν cannot qualify τῶν νόμων („the laws about the bouleutic laws“ does not make any sense). So what does it qualify? τῶν βουλευτικῶν what? It could be a generic „matters“ (understood), which would create a hopelessly vague and undefined category, but the problem is compounded if we read, with Hansen, περί also as the preposition governing τῶν κοινῶν („the laws about the

⁹⁴ Hansen 2016, 451–458. At p. 451 n. 58, Hansen admits that διαχειροτονίαν and ἐπεχειροτονήσατε are used synonymously at Demosth. or. 24.25 and 26 to indicate an individual vote („a show of hands“), that is, what in inscriptions is referred to as a διαχειροτονία. But if ἐπεχειροτονήσατε at Demosth. or. 24.26 is used as a reference to a simple διαχειροτονία, then we are left with no mention at all in Demosthenes' discussion of the ἐπιχειροτονία as an overarching procedure involving individual διαχειροτονίαι, *capitatum*, on various sections of the „code“ of law (see above pp. 85–89).

⁹⁵ See above pp. 79–82 for epigraphic language and paraphrases.

⁹⁶ On this see above pp. 89.

⁹⁷ Canevaro 2013a, 153–154; 2013b, 98–99.

⁹⁸ I leave aside τῶν κοινῶν – it is unclear what this refers to. The common laws? (What are these?) The laws common to all magistrates, as suggested by MacDowell 1975, 66–67?

⁹⁹ Hansen 2016, 464.

common matters“?). And, in this case, what happens to the arrangement by magistrate postulated by Hansen (see below) – this is not a category defined by the magistrate in charge of the relevant laws. Even Hansen, moreover, is forced to admit that τῶν ἄλλων ἀρχῶν does not work: as it is, it must qualify ἐπιχειροτονίαν, prescribing an ἐπιχειροτονία τῶν ἄλλων ἀρχῶν that has nothing to do with the ἐπιχειροτονία τῶν νόμων. To work, it should be in the dative, to match τοῖς ἐννέα ἄρχουσιν governed by κεῖνται.¹⁰⁰

The second problem is that the next sentence, which lists the way in which the votes are to be held, lists votes only on two categories, but fails to mention the last two. Hansen hypothesizes that „[t]he person(s) who drew up the law found it superfluous to repeat that for the two last categories“. This is guesswork, and one would expect such a law to be precise (it is very precise elsewhere). In any case, Hansen’s hypothesis is not impossible, and could be an option if the document proved otherwise unproblematic. But this is only one of several issues with the document, many of them major problems.

The third problem is that the document describes the votes „kapitelweise“, and then states that individual statutes have been rejected, but does not explain when and how. Hansen discusses the procedure he envisions in a previous section of his article, where he isolates two distinct kinds of ἐπιχειροτονία,¹⁰¹ and I have shown at pp. 100–105 that there is no evidence for such a procedure, and no parallels. Here I can only add that, in addition to the lack of evidence and parallels for this procedure, the second step that Hansen postulates is not actually described in the document – where does this law describe and detail the second vote on individual laws?

I also noted in my original analysis, and this is the most serious difficulty, that if the laws of Athens were effectively categorised, conceptualised, and reviewed every year, in a very important procedure of ἐπιχειροτονία τῶν νόμων, according to the categories cited in the document, then we should expect to find these categories mentioned in the orators and in other sources as the organisational principle of the laws of the city. And yet none of these categories features anywhere in our sources, and whenever we find a reference to the laws, these are named, organised and identified otherwise. Hansen has no answer to the silence of our sources about these categories. He rather takes issue with a contribution by Harris that stresses that Athenian laws were grouped by substantive contents rather than by procedural criteria.¹⁰² Hansen acknowledges that previous studies, including his own, have unduly underplayed the substantive features, but

¹⁰⁰ Schöll 1886, 86 suggests to emend in τῶν τῶν ἀρχῶν.

¹⁰¹ Hansen 2016, 458–462.

¹⁰² Harris 2009/10; 2013. 138–174; Hansen 2016, 465–466.

still holds that his interpretation that the Athenians „grouped their laws not by types of action but by the competent magistrate“ is basically accurate, and that this interpretation is upheld by the document.¹⁰³

His argument is that „since each magistrate had, up to a point, a competence determined on a material basis, the formal division of the laws did correspond roughly with a material order; thus family and inheritance laws all came under the archon, much of the law about religion came under the king archon, and the polemarch must have had the whole law relating to metics and other non-Athenians“. ¹⁰⁴ Hansen points to Hyp. Eux. 5–6 and Demosth. or. 35.37–8 as evidence that the Athenians did group their laws according to the magistrate that brought them to court. But he extrapolates too much from these passages when he talks about „the formal division of the laws“. The first passage stresses that there are separate individual laws about each and every offence, and shows that each law, identified by its substantive contents and defining a particular offence, has a particular magistrate in charge of upholding it. There is nothing here that should lead us to speculate that the laws were formally grouped or conceptualised by magistrate – it just states that each law indicated a magistrate in charge of bringing the relevant cases to court. The second passage shows that magistrates had competences and prerogatives over (roughly) discrete and substantively defined groups of offences, but it does not say anywhere that the laws were conceptualised, formally organised and grouped according to magistrate.¹⁰⁵ It shows that the Athenians conceptualised the competences of magistrates substantively, with reference to broad areas, but says nothing about formal divisions of the laws, about their organisation, or about the fact that the laws were conceptualised according to magistrate. Both passages discuss the particular jurisdictions of officials but have nothing to say about the organisational principle of the laws.

Moreover, we should note that even the magistrates whose areas of competence are mentioned at Demosth. or. 35.37–8 (and whose competences are substantively defined and recognisable) are not equivalent to the categories mentioned in the document: Demosth. or. 35.37–8 mentions the specific areas of competence of the Eleven, the Archon Eponymous, the Basileus and the Polemarch – three out of four fall under one category of our document, the Nine Ar-

103 Hansen 1991, 165; 2016, 465 n. 105.

104 Hansen 1991, 165; 2016, 465 („The grouping of laws according to the magistrate responsible for the matter in question is emphasised in two passages in forensic speeches“).

105 Cf. Harris 2013, 144: „The basic idea [...] is that laws are grouped by substantive categories, and actions are assigned to magistrates on the basis of their jurisdiction over certain areas defined in substantive terms.“

chons, and there is no room in the procedure described in the document for finer divisions, as the votes by macro-categories seem to be followed by votes on individual laws, not by further votes by specific magistrate. There is no substantive coherence whatsoever in the competences of the Nine Archons overall, or in those of all the other magistrates overall – the criterion of organisation in the document is purely procedural, which clashes with the overwhelming evidence that Athenian laws were understood and conceptualised by their substantive contents.

The same is true of τῶν βουλευτικῶν: the Athenian Council had competence over a variety of areas,¹⁰⁶ and its powers often overlapped with those of other magistrates in the enforcement of the relevant laws (Aristot. Ath. pol. 47.1). For instance, cases of *eisangelia* could start in the Council (Aristot. Ath. pol. 45.4), which could impose fines up to 500 drachmas, but over that level of penalty, the case was transferred to a lawcourt by the *thesmothetai* (Aristot. Ath. pol. 59.4). So how were the laws on *eisangelia* categorised? As part τῶν βουλευτικῶν or as part of those of the Nine Archons? The Council had also wide powers on naval administration and shipbuilding (Aristot. Ath. pol. 46; Demosth. or. 22.8). According to the law of Periander which reformed the trierarchy, trierarchs could receive naval equipment from the incumbent trierarchs, but the Council had to enact a decree assigning each incumbent to his successor. In Demosth. or. 47 the speaker had to collect his equipment from Theophemus who refused to hand it over (47.20). The speaker officially complained with the Dispatchers and the *epimeletai ton neorion* who were in charge of bringing the case to court, which convicted Theophemus (47.26). Because Theophemus did not hand the equipment over, despite the lawcourt's decision, the speaker complained again to the Dispatchers and the Council which enacted a decree authorizing the trierarch himself to collect the equipment from Theophemus's house.¹⁰⁷ This episode shows that the enforcement of many laws was carried out through the interplay between the Council and other officials: the *epimeletai*, the Dispatchers and the trierarchs. The Council plays here a central role in the procedure, but the relevant laws are impossible to categorise, according to the criteria postulated by Hansen, by the area of competence of particular magistrates. And, likewise, the Council was involved in religious matters together with the Basileus and several other officials – laws concerned with sacred matters did not squarely fall under the competences of one specific magistrate, but involved several, across the categories listed in the document. The decree for the Sacred *Orgas* (IG II³ 1 292),¹⁰⁸ for instance, reports at l. 18 that a law provided the framework within which the land division prescribed

¹⁰⁶ Rhodes 1972, 88–143; Rhodes 1981, 559–564.

¹⁰⁷ See Harris 2013, 41.

¹⁰⁸ On which see now Lambert 2012, 60–65.

by the decree took place. The law envisaged the supervision of the sacred precincts by a series of officials and public institutions: the Basileus, the Areopagus, the demarchs, the general for the protection of country, the *peripolarchoi* and the Council. Once again, how could a law like this be categorised under the categories listed in the document? The law on the *dokimastai* of silver coinage (Rhodes-Osborne 25=SEG 26.72) presents similar problems: most of the provisions define the duties of the *dokimastai* in policing silver coinage, but at ll. 13–16 the law states that if they fail to perform their duties according the law, the *σὺλλογῆς* of the *demos* must inflict on them fifty lashes of the whip. Denunciations must be made, for matters in the grain market, to the *sitophylakes*, for matters in the *agora*, to the *syllogeis*, and for matters in the market of the Peireus, to the *epimeletai* of the market (ll. 18–22). If these magistrates want to inflict penalties beyond 10 drachmas, then the matter need to be referred to a court, and therefore handed over to the *thesmothetai* (ll. 23–28). If any of these magistrates does not act in accordance with the law, he must be reported to the Council (ll. 33–5). A law such as this falls under the jurisdiction of several magistrates, falling under more than one of the categories as described in the document at Demosth. or. 24.20–3, and it is therefore impossible to categorize according to the categories of the document. Likewise, Agyrrius' Grain Tax Law (Rhodes-Osborne 26=SEG 48.96) prescribes duties for the Council, the Assembly and for ten officials elected by the Assembly to handle the grain from Lemnos, Imbros and Skyros. Once again, it is impossible to categorize such a law according to the categories mentioned in the document. The provisions in the document are incompatible with the evidence of actual Athenian laws.

My point stands: the document purports to describe a very prominent annual procedure of review of the laws, and we should expect the categories by which the review is held to be a recognisable reference point in the orators. Instead, they are never mentioned in our sources, and no laws are ever described as part of any such category.¹⁰⁹ These categories, in fact, fail to accommodate a high number of laws with very clear substantive scopes but involving the action of several different magistrates.

109 Hansen 2016, 466 mentions also the organisation of the second part of the Ath. pol. as evidence for the groupings mentioned in the document (cf. Hansen 1974, 10–12). But this text goes through the institutions of Athens, not through the laws of the city. It does so according to widespread ideas about the parts of the *politeia* (see Harris 2006, 30–32, and Canevaro 2014, 279–283 on Aristotle's division of the parts of the *politeia* in the Politics). The text is hardly evidence that the Athenians formally divided their laws in the groups listed in the document. In fact, the categories in the document are not even equivalent to those in the Ath. pol.: the Council gets its own category in both (in the Ath. pol. this category also includes the Assembly), but it is unclear what the equivalent of τῶν κοινῶν of the document is; the document divides the magistrates in

4) I noted in my analysis that the clause τὴν δ' ἐπιχειροτονίαν εἶναι τῶν νόμων κατὰ τοὺς νόμους τοὺς κειμένους is otiose, as the procedure created by the document is supposed to be a new one, and therefore there are no relevant existing laws outside of the document to be followed.¹¹⁰ Hansen counters that these existing laws to which the document refers may be general rules about voting in the Assembly, rules such as those about the tasks of *proedroi* and *prytaneis* that are not repeated in the law on *nomothesia*. We have hundreds of decrees and laws from Classical Athens, and many of them deal with votes in the Assembly and in the Council, which are to be held according to the normal rules. They never specify all the details of the procedures for voting, and yet they never feel the need to refer to the relevant laws on the topic. That the voting must be held according to the existing laws on the subject is simply understood, and there is never any need to point out that the existing laws apply. The so-called ἐπιχειροτονία τῶν νόμων is not described in the document as particularly distinctive when it comes to voting procedures (it is simply a series of διαχειροτονίαι), so there is no special reason in this instance for which it should be necessary to specify that the voting must happen according to the normal laws – how else? We find the same expression in the document at Demosth. or. 24.39–40, reporting the law of Timocrates (τὰς πράξεις εἶναι τῇ πόλει κατὰ τοὺς νόμους τοὺς κειμένους), and the expression is confirmed as part of this document at Demosth or. 24.100.¹¹¹ In that case, however, the use of the expression is not otiose at all, but makes perfect sense: the law modifies the existing rules concerning the punishment (and specifically the imprisonment) of those that owe debts to the public treasury, but towards the end it makes an exception for those who have purchased the right to collect taxes and their sureties, to whom the new rules do not apply. Accordingly, it singles out the relevant category and states that, for this category only, the existing laws must apply, and not the new law. Conversely, in the document at Demosth. or. 24.20–3 the law does not make any modification to the normal voting procedures of the Assembly, which continue to apply to all votes held in the Assembly as they always have, and there is no need (and no parallel) for the expression in such a context – it is redundant. It is in fact possible and likely that the source of the expression, for whoever composed the

the Nine Archons and all others; and the Ath. pol. has one separate category for the lawcourts. All there is here is a vague similarity in the focus on magistrates and bodies, except that this is fully justified in the Ath. pol. as this is a description of a *politeia*, not a list of groupings of laws.

¹¹⁰ Canevaro 2013a, 154; 2013b, 99.

¹¹¹ This is a stichometric document that my analysis shows to be reliable, see Canevaro 2013b, 113–121.

document, was the stichometric document at Demosth. or. 24.39–40, or the paraphrase at Demosth. or. 24.100.

5) The next point of disagreement between Hansen and myself is about the expression τὴν τελευταίαν τῶν τριῶν ἐκκλησιῶν – whether it is compatible with the corresponding expression in the paraphrase at Demosth. or. 24.25 (τὴν τρίτην ἀπέδειξαν [οἱ νόμοι] ἐκκλησίαν) and with the statement of Aristot. Ath. pol. 43.3 that οἱ δὲ πρυτανεύοντες [...] συνάγουσιν [...] τὸν δὲ δῆμον τετράκις τῆς πρυτανείας ἐκάστης.¹¹²

I shall start from the aspects on which Hansen and I agree. First, we both agree that the most obvious interpretation of τὴν τελευταίαν τῶν τριῶν ἐκκλησιῶν in the document is as a reference to the third Assembly meeting of a discrete group of three, held in one prytany („the last of the three *ekklesiai* held during the first prytany“).¹¹³ This implies that there were three Assembly meetings per prytany. We also agree that this is irreconcilable with the information provided at Aristot. Ath. pol. 43.3 that there were four Assembly meetings per prytany, a piece of information that is confirmed by Demosth. or. 18 and 19 and Aischin. 2 and 3, which document all the Assembly meetings held in the eighth prytany of 347/6, which were undoubtedly four.¹¹⁴ This is a problem that Hansen acknowledges, but tries to solve (in line with a series of discussions that he has published over many years) by postulating an evolution in the number of Assembly meetings which were three per prytany at the time of the speech (and, presumably, when the law on the so-called ἐπιχειροτονία τῶν νόμων was enacted), and became four at a later date.¹¹⁵ Like most historians, I find Hansen's arguments for such a change in the number of Assembly meetings per prytany unconvincing.¹¹⁶ This is not the place to rehearse the terms of this debate, which are in any case laid out extensively in a long series of publications. It is enough to note that if one believes, with most historians, that the Assembly meetings were four per prytany, then the document is inconsistent with external information. It is also worth remarking that, ultimately, the wording of the document is the only

¹¹² Canevaro 2013a, 154–155; 2013b, 99–100; Hansen 2016, 470.

¹¹³ Hansen 2016, 467. After stating this in clear terms, Hansen, in the context of a particular counter-argument at p. 468, tries to argue that another meaning is also possible. But this is not how he himself reads the expression at p. 467 and elsewhere.

¹¹⁴ Hansen 2016, 469 recognises this.

¹¹⁵ Hansen – Mitchel 1984; Hansen 1987; 1993.

¹¹⁶ Hansen 2016, 469 admits that most historians disagree with him on this point. See in particular Harris 2006, 81–120, which republishes his refutations of Hansen's arguments with addenda, and e. g. Lewis 1997, 15 n. 24; Rhodes – Osborne 2003, 323; Stockton 1990, 71; Pritchett 2001, 192–201; Gauthier 1987, 314; Errington 1994, 137 n. 6; MacDowell 2000, 266–267 and the references in Rhodes 1981, 521.

reason for which one may want to challenge the validity of the evidence of the Ath. pol. for the earlier period – there is no other evidence that points to such a change in the number of Assemblies as that postulated by Hansen. Once again, the reconstruction that Hansen uses to argue that the document is not incompatible with external information depends ultimately on the document alone, and his argument is circular.

Apart from this fundamental problem, and this fundamental disagreement, Hansen formulates several questionable arguments to prove that the document is not inconsistent with its paraphrase. In my original discussion, I noted that while the document talks about the last of the three Assembly meetings of the first prytany, and therefore about the second meeting after the meeting at which the so-called ἐπιχειροτονία τῶν νόμων took place, the paraphrase at Demosth. or. 24.25 talks about the τὴν τρίτην [...] ἐκκλησίαν, which should be read as the third Assembly meeting after the initial one. I supported the identification of this contradiction by pointing out that in inscriptions εἰς τὴν πρώτην ἐκκλησίαν means unequivocally „at the next Assembly meeting“, and therefore τὴν τρίτην ἐκκλησίαν must mean the third meeting after the current one. I then pointed out that this reading is confirmed by Demosth. or. 20.94, which states that the bills have to be read πολλάκις in the Assembly, which cannot indicate once or twice, but at least three times; I added that Dein. 1.42 states that the bill of the trierarchic law was read καθ' ἐκάστην ἐκκλησίαν, and not καθ' ἑκατέραν ἐκκλησίαν, another clear indication that it cannot be two meetings after the initial vote, but three.¹¹⁷

117 Hansen's attempt to explain away this further evidence (Hansen 2016, 468) is inconclusive. In an attempt to cover both scenarios (with the document being authentic and inauthentic), he states: „No matter whether it is the third or the fourth *ekklesia* of the year in which *nomothesia* is once more on the agenda of the Assembly, it is in any case the last held in the first prytany.“ But this statement is incorrect: it is only the document that states that this string of Assembly meetings is set in the first prytany, whereas nowhere in the paraphrase we find an indication that the procedure was confined to a particular time of the year – as far as the paraphrase is concerned, as I have shown above (pp. 91–100), the initial διαχειροτονία could happen at any point of the year, and the appointment of the *nomothetai* had to be discussed at the third Assembly after that. While giving the impression that his argument in support of the document here is independent of presuppositions founded on the document itself, Hansen in fact relies uncritically on it for a key feature of the procedure. He then notes that the actual session of the *nomothetai* must take place after the Assembly meeting at which the appointment of the *nomothetai* is decided, and therefore the πολλάκις of Demosth. or. 20.94 must not necessarily be limited to the period between the two Assembly meetings. But πολλάκις is used of the readings of law proposals by the secretary in the Assembly in the context of a paraphrase that follows directly the citation of the law on *nomothesia*. These readings of the new bills in the Assembly are mentioned contextually with the requirement that law proposals should be posted before the Eponymous Heroes,

Hansen states that my reading of τὴν τρίτην ἐκκλησίαν would make sense only if the expression was τὴν τρίτην ἀπέδειξαν ἐκκλησίαν μετ' ἐκείνην or ἀπ' ἐκείνης, but fails to recognize that e. g. in IG II² 103 l. 14 εἰς τὴν πρώτην ἐκκλησίαν does not require any further specification. I add here another argument that shows that, in the context of Demosth. or. 24.25, my reading of τὴν τρίτην ἐκκλησίαν is the only possible one. As I noted above (pp. 86–88, 104–105), the paraphrase of Demosth. or. 24.25 provides a very clear and tight temporal articulation of the *nomothesia* procedure. The priority of the initial διαχειροτονία held in the initial Assembly meeting is strongly marked by πρῶτον μὲν. The next steps are then introduced by μετὰ ταῦτα δέ, which marks the fact that everything else happens after this initial διαχειροτονία. The sentence introduced by μετὰ ταῦτα δέ stresses that the next steps cannot take place immediately after the διαχειροτονία, that is in the same Assembly, but that the law indicates clearly that the appointment of the *nomothetai* can be discussed only τὴν τρίτην ἐκκλησίαν. τὴν τρίτην ἐκκλησίαν is qualified therefore by μετὰ ταῦτα δέ, which makes it impossible that it may be understood inclusively – it must be the third Assembly μετὰ ταῦτα, that is the third Assembly meeting after the initial one at which the διαχειροτονία takes place.

Hansen accepts „for the sake of argument“ that Demosthenes may be referring at Demosth. or. 24.25 to the third Assembly meeting after the initial one, but even in that case he claims that we can eliminate the contradiction with the document by assuming that also τὴν τελευταίαν τῶν τριῶν ἐκκλησιῶν in the document means „the last of the three following *ekklesiai*“.¹¹⁸ But while the reading of τὴν τρίτην ἐκκλησίαν as the third *ekklesia* following the initial one is possible grammatically (cf. IG II² 103 l. 14) and is supported by the context of the reference (cf. μετὰ ταῦτα δέ), there is no reason whatsoever to interpret τὴν τελευταίαν τῶν τριῶν ἐκκλησιῶν in this sense. The expression clearly identifies a discrete unit of three Assembly meetings to be held in a given prytany (the first) and marks the third of the three as the relevant one, while the so-called ἐπιχειροτονία τῶν νόμων takes place in the first one of the prytany. If the three following Assembly meetings straddled two prytanies, why would they be indicated, with the article, as a discrete and recognisable unit (τῶν τριῶν ἐκκλησιῶν)? The two expressions are contradictory.

as part of the same provision of the law, and we know from Demosth. or. 24.25 that this provision applied to the period between the two Assembly meetings (ἐν δὲ τῷ μεταξύ χρόνῳ τούτῳ), and not beyond.

118 Cf. Hansen 2016, 467, where he is adamant instead that the expression in the document must refer to the last of the three *ekklesiai* held during the first prytany.

6) In my analysis I note that the document uses the bouleutic calendar at the beginning but the festival calendar at the end, and the festival calendar is never found in Attic decrees and laws of the late-fifth and fourth century before 341/0.¹¹⁹ This, I concluded, is strong evidence against the authenticity of the document. Hansen admits that the festival calendar is in effect never found before 341/0, but attempts to justify its use here by pointing out, first, that in neither occurrence it is used in the document to date the actual law, as in a prescript. He brings a decree of the Council proposed by Demosthenes, discussed in Aischin. 2.61, as evidence that the festival calendar could be used within the body of a decree, and muses that the first date may have been indicated according to the bouleutic calendar because it is closer to the prescript, and so it „repeats the official date“, whereas the date at the end, according to the festival calendar, was allegedly used to stress the coincidence between the two calendars.¹²⁰

Hansen's attempt to justify the use of the festival calendar in the face of overwhelming evidence that it was never used in laws and decrees before the 340s is unsatisfactory. First of all, the distinction between usage in the prescript and usage in the body of the law or decree is unwarranted by the evidence – Hansen is unable to find one single instance of the festival calendar used anywhere (not just in the prescript) in laws and decrees of the late-fifth and fourth century BCE before the 340s. To make up for this, he refers to Aischin. 2.61, where Aeschines paraphrases a decree proposed by Demosthenes in 347/6 calling for two meetings of the Assembly on the 18th and on the 19th of Elaphebolion.¹²¹ First, this is a paraphrase, not an actual decree. Hansen himself stated in an article of 1993 that „[t]he festival calendar was the one with which every citizen was familiar, whereas the bouleutic calendar was an innovation [...] used exclusively for the running of the *boule* and the *ekklesia*. Thus whereas everyone would have an idea of when it was the 16th of Pyanopsion, nobody (except the *prytaneis* themselves) would offhand recognize the 33rd day of the 3rd prytany.“¹²² It would not be surprising if Aeschines had paraphrased the dates indicated in the decree according to the bouleutic calendar by translating them into the more familiar festival calendar, because the point of Aeschines' argument here depends specifically on the precise dates of the meetings being ascertained and recognizable. The use of the festival calendar in a paraphrase is not evidence that the festival calendar was used in the decree itself. But, second and more importantly, even if this decree actually used the festival calendar, this is not evidence of a difference in

¹¹⁹ Canevaro 2013a. 155; 2013b, 101.

¹²⁰ Hansen 2016, 470–471.

¹²¹ On these events see Harris 1995, 70–77.

¹²² Hansen 1993, 109.

usage between prescripts and the body of the decrees. It must be stressed that this is a decree of 347/6, only six years earlier than the first attestation of the double dating, according to both calendars, in the prescript of an inscription. In fact, Aischin. 2.91–2 has a decree of the Council also of 347/6 read out for the very purpose of ascertaining its date, as indicated in the prescript – this date seems to have been indicated in the prescript as the third day of Munichion. This decree, that is, seems to be an early instance of the phenomenon that we see in inscriptions more commonly from 341/0.¹²³ If the decree of Demosthenes is indeed evidence of the use of the festival calendar in the body of a decree, this, far from proving that there was a difference in usage between the prescripts and the body of the decrees, shows instead that when the festival calendar started being used in the prescripts (in the 340s, as Aischin. 2.91–2 shows), it also started appearing in the body of the decrees. There is no misalignment in the usage between the prescripts and the rest of the decrees, and the example brought by Hansen, far from proving his point, is evidence that the usage was consistent in all sections of decrees and laws.

The law on *nomothesia* which the document purports to represent was not enacted in the 340s, in the 350s or in the 360s. It was enacted in the late-fifth or very early-fourth century BCE, decades before dates expressed according to the festival calendar started appearing in decrees. Hansen also observes that the dates in the document are not part of the prescript – they do not date the meeting at which the law on *nomothesia* was enacted. He argues that the prescript of the law (omitted in the document) would have contained a date expressed according to the bouleutic calendar, as was the norm. The implication of this argument is that the less well-known bouleutic calendar was used specifically to refer to meetings of the Council, of the Assembly (and, later, of the *nomothetai*) – Hansen has argued forcefully in the past, in an article called „Was the Athenian *Ekklesia* Convened According to the Festival Calendar or the Bouleutic Calendar?“, that the Assembly was summoned according to the bouleutic calendar.¹²⁴ But the two dates that we find in the document, although they are not dates in the prescript, are not random dates either – they are specifically dates marking a particular Assembly meeting, on the 11th day of the first prytany. At Demosth. or. 24.20 the date according to the bouleutic calendar marks the Assembly meeting at which the so-called ἐπιχειροτονία τῶν νόμων was meant to be held, and at Demosth. or. 24.23 the date expressed according to the festival calendar marks the same As-

¹²³ Hansen 1993, 101–102.

¹²⁴ Hansen 1993, 101–103. See also Harris 2006, 118–119, accused by Hansen of denying this, but who in fact agrees, and simply points out that in doing that the *prytaneis* had to keep an eye also on the festival calendar to avoid summoning the Assembly on festival days.

sembly meeting, at which the *demos* (that is, the Assembly) is meant to elect public advocates of the laws. These two dates are therefore not random dates, but mark a specific Assembly meeting, and Assembly meetings, as shown by all the evidence for this period and argued by Hansen himself, were always summoned and dated according to the bouleutic calendar. These dates are exactly the kind of dates we should expect, at this time, to find expressed according to the bouleutic calendar, and the use of the festival calendar at the end of the document is incongruous, unjustified and inconsistent with all the evidence. Hansen's attempt to justify this feature is special pleading.¹²⁵

7) I noted in my analysis that if, in accordance with Demosthenes' paraphrase, proposals for laws are posted after the initial Assembly meeting at which the Athenians vote on whether new proposals should be made, then there is no way for the Athenians to know at the initial meeting what contradictory laws will be challenged, and therefore to appoint qualified advocates to defend them, as the document prescribes. The provision of the document that five citizens should be elected on the 11th of Hekatombaion to defend the laws that are challenged is therefore nonsensical.¹²⁶ Hansen counters that the provision makes sense if we imagine an ἐπιχειροτονία τῶν νόμων in two stages (in accordance with Hansen's interpretation of the ἐπιχειροτονία τῶν ἀρχῶν) with a second stage at which particular laws are rejected by the *demos* – in that case the Athenians would know what laws need to be defended, and therefore would be able to appoint qualified advocates. I have shown above (pp. 100–105) that there is no evidence whatsoever (outside the document) for Hansen's interpretation of the so-called ἐπιχειροτονία τῶν νόμων as a procedure in two stages, that there is no actual parallel for such a procedure (the ἐπιχειροτονία τῶν ἀρχῶν does not provide a parallel), and that this reconstruction is irreconcilable with the information provided by Demosthenes in this speech and in Demosth. or. 20.¹²⁷ This provision is incompatible with the *nomothesia* procedure as can be reconstructed from Demosthenes' paraphrase and from other sources – it is further evidence that the

¹²⁵ Hansen 2016, 471 hypothesises that the bouleutic calendar may have been used at the beginning of the document because of the vicinity of the prescript – it „repeats the official date“. In fact, it does not repeat the same official date, unless, that is, we assume (for no reason whatsoever) that the law on *nomothesia* was also passed on the 11th of the first prytany. It is also unclear to me how referring to the same Assembly meeting, at the opposite ends of a very long law, once according to one calendar, and once according to another, with no actual explicit indication that the dates are the same, would stress the identity of the calendars – if stressing the identity of the calendars had been the purpose (and it is unclear why it would be in this instance), then whoever drafted the law could have simply expressed both dates according to both calendars.

¹²⁶ Canevaro 2013a, 155–156; 2013b, 101.

¹²⁷ On Demosth. or. 20 see Canevaro 2016a.

law that Demosthenes paraphrases cannot be the text that we find in the document.

8) I noted in my analysis that Demosthenes, in his discussions and paraphrases, always uses the technical terms *syndikoi* and (less often) *synegoroi* to refer to the elected advocates of the laws to be repealed contextually with the enactment of new laws (Demosth. or. 24.36; 20.146). These terms are also those always used for public advocates, in inscriptions and literary sources alike.¹²⁸ The document on the other hand uses the participle *συναπολογησόμενους*, which is unattested in inscriptions (as are all other forms of the verb *συναπολογέομαι*), as if it were a technical term – as a synonym of *syndikoi* or *synegoroi*.¹²⁹ Hansen counters that although *συναπολογέομαι* is unattested in inscriptions, it is attested six times (in addition to the instance in the document) in fourth-century Athenian forensic speeches (Demosth. or. 24.157; 159; 25.56; Hyp. Lyk. 10; fr. 3 ll.15–16; Lyc. 1.138) and claims that it is also a technical term, a synonym of *syndikos* and *synegoros*.¹³⁰

First of all, as I observed in my methodological remarks, the usage of the orators is a very flimsy basis on which to reconstruct documentary language, because it is clear that the orators apply much variation in their discussions and paraphrases, and can recur to periphrases that would never be used in a law or a decree (see above p. 82). When we find in a document an expression or a formula that is never found in inscriptions with that meaning, and we see that inscriptions consistently use another expression or formula for conveying that same meaning, that casts doubts on the authenticity of the document.

Second, Hansen's passages do not provide real parallels. In all these instances, the verb is used to indicate the actions and interventions of a supporting speaker that contributes to one's defence, not to indicate directly the supporting speaker or the public advocate, which are always referred to with the technical terms *syndikoi* or *synegoroi*. Although the verb belongs to the same semantic field, it is not a synonym of *syndikos* or *synegoros*, interchangeable with them in documentary language – it is never used like that. At Demosth. or. 24.157; 159; Hyp. Lyk. fr. 3 ll. 15–16 the verb is used to indicate the actions of various politicians, of Timocrates and Androtion, and of volunteers that decide to assist a defendant. It is not used in the participle, it qualifies other terms, and it is not a synonym of the technical terms *syndikos* and *synegoros*. In the only three instances in which the

¹²⁸ See Rubinstein 2000, 43–45 for this terminology.

¹²⁹ Canevaro 2013a, 156; 2013b, 101–102.

¹³⁰ Hansen 2016, 472–473. He also mentions three instances in later sources (Dion. Hal. ant. 7.54.3; Lib. decl. 49.1.5, Lib. progymn. 13.1.18) and two in *scholia* to Demosth. or. 24, but these passages are irrelevant, as they are much later and are not evidence for Classical Athenian usage.

verb is used in the participle it is not a synonym of *syndikos* or *synegoros* either. At Hyp. Lyk. 10, the participle συναπολογησομένων is used together with τῶν ἀναβαινόντων ὑπὲρ ἐμοῦ in what is clearly a periphrasis to indicate a *synegoros*, so it is not a technical term synonymous with *synegoros*.¹³¹ At Demosth. or. 25.55 the expression ὁ νῦν συναπολογησόμενος (with the participle) is not simply used to indicate the status of *synegoros*, but qualifies ironically the brother of Aristogeiton (ὁ χρηστὸς ἀδελφὸς οὐτοσί) by stressing the contrast between his previous actions (he brought once an indictment against Aristogeiton) and the current actions (speaking in support of Aristogeiton). The construction stresses with the participle that the focus is on the actions of the brother, not on his formal status. Likewise, the expression μισθοῦ δὲ συναπολογουμένοις ἀεὶ τοῖς κρινομένοις at Lyc. 1.138 does not use the participle συναπολογουμένοις simply to indicate *synegoroi* or *syndikoi*, but rather describes the action of speaking in support of a defendant for money. Again, it is not an example of the participle of this verb used, technically, as a synonym of *synegoros* or *syndikos*, but is rather a verb that strongly stresses the actions of such figures and their motivations. In all these instances, moreover, the verb is always used to indicate the activity of a co-pleader who speaks in support of a defendant in a trial, and never to indicate the activity of an elected public advocate, either of the *polis* or of an association. The verb, that is, is never used in our sources with the meaning found in the document (the meaning more usually conveyed by the term *syndikos* or the verb συνδικεῖν).¹³²

We know what the two technical terms were that could be used in Attic documentary language to indicate a publicly appointed advocate: *syndikos* and, less frequently, *synegoros*. The term *syndikos* is in fact used several times in Demosth. or. 20 as a technical term to refer to the advocates of the law of Leptines. These are the terms that we find, invariably, in inscriptions and literary sources, and these are the terms we should expect to find in a law. The document uses instead a periphrasis constructed with the participle of συναπολογέομαι, a verb that is used twice in this very speech of the activities of *synegoroi* (co-pleaders for the defendant), and in a handful of other instances elsewhere in the orators. The occurrences of this verb (in the participle or not) do not support the claim that its

¹³¹ It is unclear to me why, according to Hansen 2016, 472, the instances in Hyp. Lyk. would be particularly strong indication that the verb is a technical term like *synegoros*, and synonymous of *synegoros*. And at fr. 3 ll. 15–16 the verb is not used in the participle, and therefore it cannot demonstrate that „[t]he participle is used synonymously with *synegoros* about advocates speaking for the defendant“.

¹³² On the figure of the public advocate and the terminology used to indicate him see Rubinstein 2000, 43–44.

participle was used, in documentary language, as a technical term synonymously with *syndikos* to indicate a public advocate. This periphrasis is out of place in a law, and together with several other issues and problematic features, contributes to the overall case against the authenticity of the document.

5. Conclusion

Hansen's challenge to my analysis has allowed me to clarify some of the key tenets of my methodology, as well as to analyse more in depth the evidence for the *nomothesia* procedure found in particular in Demosth. or. 24, as well as the procedure, the structure and the language of the document at Demosth. or. 24.20–3. In this article I have shown that any attempt to read Demosthenes' paraphrase of the relevant law in a way that is consistent with the procedure described in the document leads, in some cases, to uneconomical and improbable readings that stretch the meaning of the text beyond recognition; in other cases, to readings that are quite simply impossible and contradicted by the text and by other evidence. There are fundamental and undeniable contradictions between the document and the evidence of the speech and of other sources, which show that the document cannot be the law on *nomothesia* quoted and discussed in the speech. This is reinforced by several problematic features in the document itself, which contradicts external evidence at several places and shows language and expressions incompatible with Athenian documentary language. These are decisive reasons to deem this document non-authentic – a later forgery.

This has important consequences for the reconstruction of Athenian *nomothesia*: Hansen's interpretation, presented first in Hansen (1985) and reiterated in Hansen (2016), takes the document as its starting point and has as its main purpose to accommodate the procedure described in the document, but is uneconomical and problematic when it attempts to explain the evidence of the paraphrase in Demosth. or. 24, the external evidence of Demosth. or. 20 and of other passages in the orators, and the evidence of inscriptions. The reading of the *nomothesia* procedures that I offered in Canevaro (2013a) remains the most economical interpretation of the procedure, and the most adherent to what the relevant sources actually say, free from prejudices derived from the document that have for too long hampered our understanding of *nomothesia*.

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